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[DANIELL'S CHANCERY PRACTICE.

FORMS AND PRECEDENTS

OF

PLEADINGS AND PROCEEDINGS

IN

The High Court of Chancery,

WITH PRACTICAL NOTES AND OBSERVATIONS,

AND INCORPORATING THE FORMS IN

BRAITHWAITE'S RECORD AND WRIT PRACTICE:

By LEONARD FIELD and EDWARD CLENNELL DUNN,

BARRISTERS-AT-LAW,

AND

JOHN BIDDLE,

OF THE MASTER OF THE ROLLS' CHAMBERS.

SECOND EDITION,

WITH REFERENCES TO THE FIFTH EDITION OF

DANIELL'S CHANCERY PRACTICE:

BY

JOHN BIDDLE.

LONDON:

STEVENS AND SONS, 119, CHANCERY LANE,

Law Booksellers and Publishers.

1871.

LONDON:
BRADBURY, EVANS, AND CO., PRINTERS, WHITEFRIARS.

PREFACE.

THE present, like the former, Edition has been prepared for use either as a companion volume to DANIELL'S CHANCERY PRACTICE, or as an independent Work. References to the Practice, and to the Statutes, General Orders and Regulations, have been given throughout; and the arrangement of the Practice has been followed as closely as appeared convenient.

The Forms have been carefully revised; and many additions have been made to them: including Forms applicable to the practice under The Companies' and Railway Companies' Acts of 1867.

The Proof Sheets have been read by Mr. Braithwaite, of the Record and Writ Clerks' Office, and by Mr. Upjohn, of the Master of the Rolls' Chambers: both of whom have rendered other valuable aid in the preparation of this Edition for the Press.

The best thanks of the Editor are returned to several Officers of the Court for information kindly afforded him; and to many professional friends for useful suggestions and the loan of papers.

CHANCERY LANE,
June, 1871.

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v. Sydney Sussex College, 888, n. (*e*)
v. Wilson, 763, n. (*s*); 1108, n. (*n*)

B.

Back *v.* Inns of Court Hotel Co., Limited, 1760, n. (*m*)
Bacon *v.* Clarke, 287, n. (*m*)
Bahre *v.* Murrieta, 231, n. (*a*)
Baker *v.* Farmer, 1350, n. (*a*)
Baldwin, *Re*: Baldwin *v.* Bennett, 1201, n. (*r*)
Balls *v.* Bradfield, 684, n. (*v*)
Bank of Hindustan, &c., Limited, *Re*, 308*, n. (*m*)
— London *v.* Tyrrell, 750, n. (*y*)
Barkworth *v.* Young, 2250, n. (*a*); 2253, n. (*d*)
Barlow, *Re*, 1452, n. (*g*)
— *v.* McMurray, 241, n. (*d*)
Barnett, *Re*, 2146, n. (*m*)
Barret, *Re*, 2005, n. (*s*)
Barrett *v.* Mortimer, 1889, n. (*b*)
Barrow *v.* Hyslop, 104, n. (*e*)
Barry Railway Co., *Re*, 2080, n. (*i*); 2081, n. (*k*)
— *v.* Croskey, 503, n. (*x*)
— *v.* Smith, 665, n. (*y*)
Bartholomew, *Re*, 1914, n. (*l*)
Barton *v.* Rock, 1886, n. (*x*)
Bathurst *v.* Murray, 1496, n. (*p*)
Bathyany *v.* Padwick, 790a, n. (*e*)
Baur *v.* Murietta, 721, n. (*l*)
Bayley, *Re*, 1575, n. (*x*)
Beavan, *Re*, 1575, n. (*x*)
Beckwith *v.* Booth, 155, n. (*s*)
Beddgelert Ry. Co., *Re*, 2993, n. (*h*); 2094, n. (*m*)
Bedford *v.* Bedford, 1807, n. (*b*)
Begbie *v.* Fenwick, 1940, n. (*f*)
Belchier *v.* Belchier, 1223, n. (*l*)
Bell, *Re*: Foster *v.* Bell, 1868, n. (*r*)
— *v.* Bacon, 365, n. (*p*)
— *v.* Smith, 740, n. (*m*)
Bellis *v.* Jones, 1746, n. (*r*); 1854, n. (*q*)
Beresford *v.* Cane: *Re* Willoughby, 1665, n. (*d*)
Berndston *v.* Churchill, 663, n. (*u*)
Berry, *Re*: Nicholson *v.* Norman, 1327, n. (*v*)
Best *v.* Stonehewer, 109, n. (*k*)

Bicknell *v.* Bicknell, 653, n. (*l*)
Biddulph *v.* Lord Camoys, 1717, n. (*s*)
Biggs *v.* Walford, 1231, n. (*z*)
Binks *v.* Binks, 1816, n. (*c*)
Birdsall *v.* Bradley, 308, n. (*q*)
Blagrave *v.* Blagrave, 2127, n. (*i*); 2128, n. (*l*)
Blithman, *Re*, 1680, n. (*u*)
Bloxam (*or* Bloxsome) *v.* Chichester, 602, n. (*t*)
Bohemian Glass Co., Limited, *Re*, 77, n. (*i*)
Booth *v.* Coulton, 155, n. (*p*); 186, n. (*x*)
Borman *v.* Willmett, 1769, n. (*x*)
Bouquet *v.* Waller, 1814, n. (*o*)
Bovill *v.* Clark, 635, n. (*l*)
— *v.* Goodier, 1618, n. (*t*)
Boyle, *Re*, 1465, n. (*z*)
Bradbury *v.* Shawe, 673, n. (*g*)
Bradish *v.* Ellames, 2180, n. (*t*); 2181, n. (*u*); 2182, n. (*y*)
Brady, *Re*, 1575, n. (*x*)
Brailey, *Re*, 2165, n. (*h*)
Brandling *v.* Plummer, 308†, n. (*b*)
Brearey *v.* Green, 379, n. (*b*); 602, n. (*t*)
Briant, *Re*, 2008, n. (*o*)
Brierly *v.* Hussey, 363, n. (*n*)
Bristol & North Somerset Ry. Co., *Re*, 2096, n. (*p*)
British Equitable Assurance Co. *v.* Vale of Neath Ry. Co., 308*, n. (*n*)
British Provident, &c., Society (Official Manager of) *v.* Vialls, 668, n. (*b*)
Bromley *v.* Beal, 1884, n. (*t*)
Brooke *v.* Ellis, 272, n. (*x*)
Brooke's Trust, *Re*, 151, n. (*i*)
Brown *v.* Gellatly, 1552, n. (*o*); 1575, n. (*x*); 1914, n. (*l*)
— *v.* Pennefather, 2058, n. (*o*)
Browne *v.* Rennolls, 1995a, n. (*b*)
Bruff *v.* Cobbold, 633, n. (*i*)
Buckeridge *v.* Whalley, 1168, n. (*x*)
Burgess *v.* Burgess, 698, n. (*n*)
Burnett *v.* Nicol, 74, n. (*e*)
Burrell, *Ex parte*, 2002, n. (*k*)
Burton *v.* Prance, 363, n. (*n*)
— *v.* Shaw, 244, n. (*a*); 264 n. (*l*)
Butler *v.* Butler, 936, n. (*y*)
Butlin, *Re*, 1903, n. (*m*); 1914, n. (*l*)
— *v.* Arnold, 235, n. (*z*); 1224, n. (*m*)
Butt *v.* Harcourt, 1282, n. (*b*)

C.

Camille *v.* Donato, 1575, n. (*x*)
Candy *v.* Arthur, 231, n. (*n*)
Cannington *v.* Nuttall, 1573a, n. (*t*)
Cannon *v.* Johnson, 1575, n. (*x*)
Capper v. Cambrian Ry., 1983, n. (*o*)
Cardwell *v.* Watts, 544, n. (*y*)
Carrington *v.* Nuttall, 364, n. (*o*)
Carter *v.* Drew, 1665, n. (*d*)
Casey, *Re*: Neal *v.* Casey, 1947, n. (*p*)
Casson *v.* Cuffe, 374, n. (*c*)
Catlin, *Re*, 1575, n. (*x*)
Caulfield *v.* Elliott, 285, n. (*k*); 1775, n. (*d*)
Chalie *v.* Gwynne, 670, n. (*d*)
Chandler *v.* Brittan, 1870, n. (*u*)
Chapman *v.* Brown, 888, n. (*e*)
— *v.* Collins, 102, n. (*b*)
Charnock, *Ex parte*, 2002, n. (*k*)
Chick, *Re*: Chick *v.* Hope, 1611, n. (*e*)
Cholmondeley (Marquis of), *Re*, 2054, n. (*b*); 2064, n. (*c*)
Churton *v.* Frewen, 635, n. (*l*); 1189, n. (*u*); 1575, n. (*x*)
City of Mobile, *Re*, 2174, n. (*c*)
Clark *v.* Clark, 1303, n. (*c*)
Clarke *v.* Clarke, 362, n. (*m*)
Clay *v.* Fenton, 231, n. (*l*)
Clayton *v.* Guy, 303, n. (*n*)
Clements *v.* Clifford, 663, n. (*u*)
Cleverly *v.* Cleverly: *Re* Praugnall, 1230, n. (*x*)
— *v.* Troughton, 1826, n. (*d*)
Closson *v.* Bassano, 285, n. (*k*)
Clowes *v.* Prescott, 1665, n. (*d*)
Cochrane *v.* Willis, 497, n. (*p*)
Cocq *v.* Blakley, 70, n. (*z*)
Cole *v.* Watkins, 681, n. (*s*)
Coles *v.* Alcock, 1750, n. (*x*)
— *v.* Coles, 1284, n. (*d*)
Collins *v.* Catley, 72, n. (*b*)
Colyer *v.* Colyer, 1949, n. (*b*)
Constantinople & Alexandria Hotel Co., Limited, *Re*, 1048, n. (*l*)
Conway *v.* Roe, 220, n. (*l*)
Cook, *Re*, 2015, n. (*i*)
Cooke *v.* Forbes, 830, n. (*n*)
— *v.* Hathway, 1719, n. (*x*)
— *v.* Lovell, 308, n. (*d*)
Cookes *v.* Cookes, 1830, n. (*k*)
Cooper *v.* Cooper, 221, n. (*i*)
— *v.* Hoar, 697, n. (*m*)
— *v.* Macdonald, 801, n. (*c*); 1167, n. (*v*)
Corbett *v.* Fox, 2127, n. (*h*)
Cork (Earl of) *v.* Russell, 1668, n. (*h*)
Corporation of Hythe *v.* East, 991, n. (*d*)
Cotton, *Re*, 1575, n. (*x*)
Coulthard *v.* Coulthard, 552, n. (*d*)
Cowan *v.* Salomons, 1766, n. (*s*)
Cox *v.* Rhymney Iron Co., 1803, n. (*t*)
— *v.* Wright, 1473, n. (*h*)
Crabtree *v.* Poole, 298, n. (*g*)
Credit Foncier of England, *Re*, 2205, n. (*s*); 2219, n. (*d*)
Cresswell *v.* Bateman, 1920, n. (*v*)

Cresswell *v.* Jackson, 889, n. (*g*)
Crofts *v.* Middleton, 800, n. (*b*)
Croskey *v.* European & American Steam Co., 1283, n. (*c*)
Cross *v.* Maltby, 1428, n. (*g*)
Cumming, *Re*, 2055, n. (*k*)
Cusack *v.* Henry, 766, n. (*y*)
Cust *v.* Middleton, 1331, n. (*a*)

D.

D'Alteyrac *v.* Long, 99, n. (*i*)
Danell *v.* Page, 621, n. (*u*)
Darlow *v.* Sinnock, 301, n. (*k*)
Davenport *v.* Jepson, 1792, n. (*d*)
Davies *v.* Davies, 889, n. (*g*)
— *v.* MacHenry, 1725, n. (*g*); 1730, n. (*o*); 1732, n. (*r*)
— *v.* Marshall, 1575, n. (*x*)
Davis *v.* Bluck, 1720, n. (*y*)
— *v.* Davis, 803, n. (*e*)
Dawson, *Re:* Dawson *v.* Stansfeld, 1477, n. (*m*)
— *v.* Clark, 1322, n. (*q*); 1325, n. (*t*)
— *v.* Thomson, 1772, n. (*a*)
Dearle *v.* Hinchliff, 1928, n. (*b*); 1938, n. (*d*)
De la Peyrouse *v.* Pelly, 716, n. (*e*); 1700, n. (*q*)
De la Warr (Earl) *v.* Cavendish, 231, n. (*o*)
Dent *v.* Auction Mart Co., Limited, 737, n. (*i*)
De Silva *v.* Benoliel, 693, n. (*e*)
De Sorbien *v.* Bland, 1021, n. (*p*)
Devon & Somerset Ry. Co., *Re*, 2119, n. (*x*)
Dicker *v.* Gillespie, 1933, n. (*t*)
Dickinson *v.* Miller, 477, n. (*m*)
Dixon *v.* Bagshawe, 138, n. (*r*)
Dobede *v.* Edwards, 677, n. (*m*)
Dodd *v.* Bates, 1223, n. (*k*)
— *v.* Holbrook, 1047, n. (*i*)
D'Oechsner *v.* Scott, 657, n. (*p*)
Donnington Church Lands, *Re*, 2034, n. (*t*)
Drake *v.* Symes, 372, n. (*a*)
Dubois *v.* Mixer, 728, n. (*u*)
Du Cane, *Re*, 2067, n. (*l*)
Duke, *Re*, 2002, n. (*i*)
Dunn *v.* Brown, 1982, n. (*n*)
— *v.* Turquand, 801, n. (*c*); 1154, n. (*a*)
Durrant *v.* Durrant, 118, n. (*v*)
Duxbury *v.* Isherwood, 2131, n. (*p*)

E.

Easey *v.* Webber, 618, n. (*r*)
Easton *v.* Watson, 308†, n. (*a*)
Eborall *v.* Forrest, 1889, n. (*b*)
Ecclesiastical Commissioners *v.* Marshall, 216, n. (*b*)
Edington *v.* Sloper, 231, n. (*c*); 308, n. (*y*)
Edmunds *v.* Lawrence, 644, n. (*d*)
— *v.* Lord Brougham, 869, n. (*d*)
Egham Burial Board, *Re*, 2037, n. (*e*)
Ekins *v.* Morris, 1983, n. (*o*)
Ellames, *Re*, 2180, n. (*t*)
English Joint Stock Bank, Limited, *Re*, 740, n. (*m*)
Equitable Reversionary Interest Society *v.* Bank of England, 1803, n. (*t*)
Ernest *v.* Govett, 672, n. (*f*)
— *v.* Partridge, 1575, n. (*x*)
Evans *v.* Price, 206, n. (*l*)
Eyre *v.* Cunliffe, 287, n. (*m*)

F.

Feltham *v.* Turner, 755, n. (*g*)
Fereday *v.* Tinsley, 1669, n. (*i*)
Finch *v.* Finch, 302, n. (*m*)
— *v.* Westrope, 1938, n. (*d*)
Finney *v.* Salt, 692, n. (*c*)
Firth *v.* Sykes, 830, n. (*n*)
Fitchew *v.* Fitchew, 1500, n. (*u*)
Fletcher, *Re*, 1906, n. (*t*)
— *v.* Fletcher, 1958, n. (*p*)
Fobert, *Re:* Wood *v.* Fobert, 1206, n. (*c*)
Foley *v.* Maillardet, 292, n. (*u*); 487, n. (*e*); 489, n. (*f*)
Forbes, *Re*, 1207, n. (*k*)
Forrer *v.* Nash, 700, n. (*p*)
Foster *v.* Bell: *Re* Bell, 1868, n. (*r*)
— *v.* Christmas, 659, n. (*r*)
— *v.* Harvey, 668, n. (*b*)
Fowler *v.* Druce, 609, n. (*g*)
— *v.* Liles, 218, n. (*e*)
Fox *v.* Earl Amherst, 1333, n. (*c*)
— *v.* Gurnell, 1665, n. (*d*); 1666, n. (*e*)
Foxwell *v.* Hollin, 668, n. (*b*)
— *v.* Salamon, 676, n. (*k*)
Firth *v.* Sykes, 830, n. (*n*)
Francklin *v.* Edgell, 2158, n. (*n*)
Franks *v.* Lloyd, 308*, n. (*p*)
Fraser *v.* Badloff, 308, n. (*k*)
Friend *v.* Solly, 1575, n. (*x*)
Frost *v.* Ward, 1223, n. (*i*)
Fuller, *Re*, 2048, n. (*u*)
Futvoye *v.* Kennard, 670, n. (*g*)

G.

Gaby *v.* Gaby, 666, n. (*z*)
Gadesden, *Re*, 2147, n. (*o*)
Gannon *v.* Gannon, 927, n. (*h*)
Garwood *v.* Curteis, 1691, n. (*c*)

Gates *v.* Buckland, 260, n. (*x*)
General Credit & Finance Co. *v.* London, Chatham & Dover Ry., 433, n. (*e*)
General Steam Navigation Co. *v.* Taylor, 1930, n. (*k*)
Getty *v.* Ridley, 552, n. (*d*)
Gibbins *v.* Baseley, 1931, n. (*r*)
Gibbs *v.* Gibbs, 1710, n. (*h*)
Gibson *v.* Dawson, 202, n. (*b*)
Giles *v.* Jones, 1308, n. (*l*)
— *v.* Parker, 634, n. (*k*); 728, n. (*u*)
Gillow *v.* Brooks, 308, n. (*a*)
Glaholm *v.* Barker, 2233, n. (*m*)
Glanvill *v.* Glanvill, 1807, n. (*b*)
Glazebrook *v.* Clark, 660, n. (*s*)
Glover, *Re*, 1927, n. (*f*); 2046, n. (*o*)
Godfray *v.* Brook, 1303, n. (*c*)
Godfrey *v.* Whitehead, 1885, n. (*u*)
Goodfellow *v.* Thirlwall, 649, n. (*i*)
Goodman *v.* Midland Ry. Co., 433, n. (*e*)
Gosling *v.* Moffatt, 303, n. (*u*)
Gosnell *v.* Gosnell, 1991, n. (*x*)
Goss, *Re:* Liddall *v.* Nicholson, 1927, n. (*f*)
Gould *v.* Dummett: *Re* Reece, 1575, n. (*x*)
Gouldie *v.* Hick, 233, n. (*s*)
Grainger *v.* Wright, 308†, n. (*e*)
Granger *v.* Taunton, 308†, n. (*g*)
Gray *v.* Gray, 791, n. (*f*)
Green *v.* Briggs, 1575, n. (*x*)
Greenhill *v.* Smart, 1620, n. (*y*)
Gregg *v.* Kidd, 1665, n. (*d*)
Gully *v.* Davis, 497, n. (*p*)
Gummoe *v.* Howes, 2004, n. (*n*)
Gunter, *Re*, 2064, n. (*c*)
Gurnell *v.* Upton, 308*, n. (*s*)

H.

Hackney Charities, *Re*, 2035, n. (*x*); 2036, n. (*a*)
Hagell *v.* Currie, 1323, n. (*r*)
Halford *v.* Brooks, 1989, n. (*t*)
Hall *v.* Hall, xxxii.
— *v.* Hargreaves, 735, n. (*h*)
v. Ordish, 544, n. (*y*)
— *v.* Urmer, 224, n. (*m*)
Hallam *v.* Bland, 2196, n. (*a*)
Hallows *v.* Fernie, 1575, n. (*x*); 1779, n. (*h*)
Hanslip *v.* Norwich & Spalding Ry. Co., 308*, n. (*x*); 1014, n. (*t*); 1947, n. (*p*)
Harby *v.* Moore, 1366, n. (*y*)
Harding, *Re:* Read *v.* Harding, 1681, n. (*y*)
— *v.* Bennett, 723, n. (*r*)
Hare *v.* Roebuck, 308*, n. (*r*)
Harle, *Re*, 1575, n. (*x*)
Harrington *v.* Harrington, 231, n. (*z*); 1856, n. (*s*)
Harris *v.* Harris, 1479, n. (*o*)
Harrison *v.* Richards, 1322, n. (*p*)
Hart *v.* Cuthbert, 308, n. (*l*); 602, n. (*t*)
Hasluck *v.* Hasluck, 260, n. (*x*)
Hawkins, *Re*, 1356, n. (*k*)
Hay *v.* Burdett, 618, n. (*r*); 619, n. (*s*)
Hayling Rys. Co., *Re*, 2113, n. (*m*); 2117, n. (*r*)
Haynes *v.* Barton, 1991, n. (*x*)
Healey *v.* Chichester, &c., Ry., 991, n. (*d*)
Hearn *v.* Bannister, 960, n. (*x*)
Hemming *v.* Maddock, 701, n. (*q*)
Henderson *v.* Campbell, 285, n. (*k*)
Herbert *v.* Herbert, 1477, n. (*m*)
Hereford, Hay & Brecon Ry. *v.* Rae, 238, n. (*b*)
Herne Bay, &c., Act, *Re*, 114, n. (*p*)
Hewitson *v.* Sherwin, 61, n. (*p*)
Hey *v.* Bate, 1729, n. (*n*)
Heywood *v.* Wait, 1792, n. (*d*)
Higgins *v.* Underwood, 544, n. (*y*)
Hiles *v.* Moore, 1830, n. (*h*)
Hill *v.* Gaunt, 681, n. (*s*)
Hills *v.* Reynolds, 308†, n. (*c*)
Hilton *v.* Cutts, 317, n. (*h*)
Hind, *Re*, 2019, n. (*q*)
Hinde *v.* Skelton, 517, n. (*z*)
Hobson *v.* Shearwood, 1851, n. (*m*)
Hodder *v.* Lane, 991, n. (*d*); 992, n. (*e*)
Hodges Distillery Co. *v.* Doulton, 545, n. (*z*)
— *v.* Hodges, 231, n. (*h*)
Hodson, *Re*, 1483, n. (*x*)
Holden *v.* Holden, 1330, n. (*z*)
Holland *v.* Dickinson, 379, n. (*b*)
Hollis *v.* Allan, 1963, n. (*y*)
Hollyford Copper Mining Co., Limited, *Re*, 1046, n. (*f*)
Holmes *v.* Dudley, 1490, n. (*g*); 1826, n. (*d*)
— *v.* The Queen, 150, n. (*h*)
Homfray *v.* Green, 692, n. (*e*); 716, n. (*e*)
Honywood *v.* Honywood, 1332, n. (*b*)
Hooper *v.* Campbell, 1764, n. (*q*)
Hopcroft *v.* Moreton: *Re* Moreton, 1286, n. (*f*)
Horne *v.* Hickman, 697, n. (*m*)
Howard *v.* Barnwell, 1112, n. (*q*); 1116, n. (*z*)
— *v.* Cosier, 1889, n. (*b*)
— *v.* Cross, 308†, n. (*m*)
Howe *v.* Grey, 792, n. (*g*)
Hudson *v.* Austen, 140, n. (*t*)
— *v.* Richards, 721, n. (*l*)
Hughes *v.* Hughes, 308, nn. (*x*), (*b*)
— *v.* Saunders, 308†, n. (*p*)

Hulse *v.* Hardstaff, 885, n. (*b*)
Humphreys, *Re:* Andrews *v.* Jones, 1206, n. (*e*)
Hunt *v.* Brown, 1764, n. (*q*)
Hyde (Corporation of) *v.* East, 991, n. (*d*)

I.

Inns of Court Hotel Co., Limited, *Re*, 1759, n. (*l*)
Irons *v.* Blyton, 1427, n. (*f*)
Isle of Wight Ferry Co. *v.* Pearson, 1777, n. (*f*)
— Ry. Co., *Re*, 2113, n. (*m*); 2117, n (*r*)

J.

Jackson *v.* Duke of Newcastle, 231, n. (*e*)
— *v.* Parkin, 199, n. (*x*)
James *v.* Rice, 1228, n. (*g*)
Jegon *v.* Vivian, 755, n. (*g*)
Jennings *v.* Walker, 231, n. (*d*)
Johnson *v.* Helleley, 1371, n. (*e*); 1408, n. (*e*)
— *v.* Rawlinson, 1993, n. (*y*)
Jones, *Re*, 2019, n. (*q*)
— *v.* Adamson, 387, n. (*r*); 389, n. (*s*)
— *v.* Cooke, 308*, n. (*o*)
— *v.* Garrad, 1943, n. (*k*)
— *v.* Hey, 1729, n. (*n*)
— *v.* Owen, 791, n. (*f*)
— *v.* Tinney, 670, n. (*d*)
— *v.* Williams, 667, n. (*a*)
Jopp *v.* Wood, 1610, n. (*c*); 1613, n. (*l*)

K.

Kay *v.* Hargreaves, 608, n. (*f*)
Kelly *v.* Hutton, 1947, n. (*p*)
— *v.* Randell, 232, n. (*r*)
Kemp *v.* Nunn, 1441, n. (*s*)
Kennedy *v.* Kennedy, 1665, n. (*d*)
Kensington (Lord) *v.* Metropolitan Ry., 737, n. (*i*)
— Proprietary School, *Re*, 2177, n. (*h*)
Kent *v.* Wolstenholme, 231, n. (*g*)
Kenyon *v.* Lee: *Re* Lee, 2053, n. (*z*)
Kernick *v.* Kernick, 71, n. (*a*)
Kidder *v.* Proudfoot, 1317, n. (*b*)
Kinton, *Re*, 2047, n. (*s*)
Kirby, *Re*, 913; n. (*l*); 914, n. (*n*)
Klingender *v.* Patteson, 1777, n. (*f*)
Knight *v.* Holden, 308, n. (*c*)

L.

Lawson *v.* Halford, 264, n. (*l*)
Layton *v.* Spicer: *Re* Woollams, 1128, n. (*p*)
Lea *v.* Anderton, 803, n. (*e*)
Leach *v.* Westall, 1421, n. (*y*)
Lechmere *v.* Clamp, 721, n. (*l*); 722, n. (*n*); 857, n. (*i*)
Lee, *Re:* Kenyon *v.* Lee, 2053, n. (*z*)
— *v.* Angas, 763, n. (*s*); 1108, n. (*n*)
Leeds Banking Co., *Re*, 992, n. (*f*)
Lees *v.* Sullivan, 692, n. (*e*)
Legg *v.* Newman: *Re* Stanley, 1665, n. (*d*)
Leigh *v.* Turner, 513, n. (*u*); 514, n. (*x*); 2258, n. (*h*)
Leighton *v.* Shrewsbury & N. W. Ry. Co., 308†, n. (*h*)
Leonard, *Re*, 2195, n. (*z*)
Lewis *v.* Broad, 1153, n. (*x*)
— *v.* Fothergill, 703, n. (*s*); 704, n. (*t*)
Liddall *v.* Nicholson: *Re* Goss, 1927, n. (*f*)
Linford *v.* Gudgeon, 2194, n. (*y*)
Lister *v.* Warburton, 402, n. (*m*); 447, n. (*z*)
Little *v.* Hope, 545, n. (*z*)
Liverpool & Dublin Steam Navigation Co., Limited, *Re*, 1041, n. (*r*)
— Sanatory Amendment Act, 1864, *Re*, 2092, n. (*f*)
Lloyd, *Re*, 2077, n. (*e*)
— *v.* Jones, 1621, n. (*z*)
— *v.* Oliver, 302, n. (*m*)
— *v.* Solicitors' Life Assurance Co., 724, n. (*s*)
Lockwood *v.* Ellam, 1855, n. (*r*)
— *v.* Wheelright, 1930, n. (*m*)
Login *v.* Princess of Coorg, 260, n. (*x*); 1098, n. (*s*); 1100, n. (*u*)
London and South Western Ry. *v.* Southampton Hotel Co., Limited, 231, n. (*m*)
London, Chatham, & Dover Ry., *Re*, 2082, n. (*n*)
Ibid. v. Imperial Mercantile Credit Association, 495, n. (*n*)
London (Mayor, &c., of), *Ex parte*, 2088, n. (*z*)
Londonderry (Marchioness of) *v.* Baker, 504, n. (*g*)
Long *v.* Storie, 671, n. (*e*)
Lyne *v.* Drury, 238, n. (*b*)
Lyons, *Re*, 1464, n. (*t*)

M.

Macann *v.* Borradaile, 657, n. (*p*)
McDonogh *v.* Gregory, 544, n. (*y*)

Macfarlane *v.* Hoffman, 362, n. (*m*)
MacHenry *v.* Davies, 126, n. (*e*)
McIntosh *v.* Great Western Ry. Co., 839, n. (*a*)
— *v.* Temple, 308*, n. (*y*)
Macintosh *v.* Stewart, 1889, n. (*b*)
McKenna *v.* Everitt, 839, n. (*a*)
Mainwaring *v.* Coyney, 552, n. (*d*)
Malam, *Re*, 1949, n. (*b*)
Malins *v.* Price, 1575, n. (*x*)
Maltby *v.* Ware, 665, n. (*y*)
Manley *v.* McCauley : *Re* Wood, 1128, n. (*p*)
Manton *v.* Manton, 308†, n. (*o*); 931, n. (*q*); 932, n. (*r*)
Marchant v. Blewitt, 308†, n. (*k*)
Marks *v.* Wilson, 298, n. (*g*)
Marsh *v.* Mogg, 308†, n. (*i*)
Marshall, *Re*, 1208, n. (*n*)
Martin *v.* Purnell, 543, n. (*u*)
Mathews *v.* Chichester, 88, n. (*t*)
Matson *v.* Dennis, 1428, n. (*g*)
Maule *v.* Eaton, 1767, n. (*e*)
May, *Re*, 1575, n. (*x*)
May *v.* Davenport, 308†, n. (*j*)
Mayer *v.* Frith, 613, n. (*m*)
Mayhew, *Re*, 2013, n. (*f*)
Mayor, &c., of London, *Ex parte*, 2088, n. (*z*)
Meek *v.* Burnley, 1678, n. (*r*)
Merry, *Re*, 2061, n. (*u*)
Middleton *v.* Chichester, 693, n. (*g*); 694, nn. (*h*), (*j*)
Mid-Hants Ry. Co., *Re*, 2097, n. (*s*); 2104, n. (*b*)
— Wales Ry. Co., *Re*, 2097, n. (*t*); 2098, n. (*t*); 2117, n. (*r*)
Miller *v.* Miller, 550, n. (*c*); 1995a, n. (*b*)
Mold & Denbigh Junction Ry. Co., *Re*, 2097, n. (*s*); 2098, n. (*t*); 2113, n. (*m*); 2117, n. (*r*)
Monmouthshire Ry. & Canal Act, *Re*, 2092, n. (*f*)
Moore *v.* Miller, 544, n. (*y*)
Mordecai *v.* Harrison, 515, n. (*y*)
Moreton, *Re:* Hopcroft *v.* Moreton, 1286, n. (*f*)
Morgan *v.* Morgan, 102, n. (*b*)
— *v.* Nicholas : *Re* Williams, 2194, n. (*y*)
Morris *v.* Macaulay, 517, n. (*z*)
— *v.* Vines, 2230, n. (*i*); 2260, n. (*k*)
Moxon *v.* Bright, 936, n. (*t*); 965, n. (*f*); 981, n. (*j*)
— *v.* Locker, 1763, n. (*p*)
Moye *v.* Bateman, 6, n. (*f*); 1989, n. (*t*)
Mure *v.* Mure, 1959, n. (*r*)

N.

Neal *v.* Casey : *Re* Casey, 1947, n. (*p*)
Negretti *v.* Prothero, 635, n. (*l*)
Nelson *v.* Webster, 287, n. (*n*)
Newland *v.* Steer, 763, n. (*s*); 1108, n. (*n*)
Nicholas *v.* Cowper, 362, n. (*m*)
Nicholls *v.* Haslam, 1575, n. (*x*)
Nicholson *v.* Armitage, 1665, n. (*d*)
— *v.* Norman : *Re* Berry, 1327, n. (*v*)
Nixey *v.* Roffey, 799, n. (*z*)
Norris *v.* Sadleir, 1230, n. (*x*)
Northern Investment Co. *v.* Seaton : *Re* Seaton, 1206, n. (*e*)
Northumberland, &c., Bank *v.* Walters, n. (*m*)
— Central Ry. *v.* Waring, 236, n. (*a*)
Noton, *Re*, 2008, n. (*o*)
Nowell *v.* Nowell, 1933, n. (*t*)

O.

O'Brien *v.* Davis, 1851, n. (*m*)
Official Manager of British Provident, &c., Society *v.* Vialls, 668, n. (*b*)
Olver *v.* Buse, 298, n. (*g*)
Onyon *v.* Washbourn, 980, n. (*h*)
Osborn, *Re*, 878, n. (*q*)
Osborne *v.* Marsden, 1291 (3), n. (*n*)
Other *v.* Smurthwaite, 1816, n. (*c*); 1824, n. (*n*).
O'Toole *v.* Brown, 254, n. (*p*); 1303, n. (*c*); 1870, n. (*u*); 1889, n. (*b*)
Overton *v.* Niven, 1524, n. (*e*)
Oxford Charities, *Re*, 2039, nn. (*i*), (*l*)

P.

Page, *Re*, 2040, n. (*o*)
Palmer *v.* Fleming, 1668, n. (*h*)
Peach *v.* Barnes, 552, n. (*d*)
Peake *v.* Braham, 814, n. (*s*)
Pearce *v.* Dobinson, 1995a, n. (*b*)
— *v.* Spencer, 1315, n. (*y*)
Peek *v.* Earl Spencer, 238, n. (*b*)
— *v.* Larson, 364, n. (*o*)
Pender, *Re*, 1575, n. (*x*)
Pennefather *v.* Short, 1027, n. (*z*); 1030, nn. (*e*), (*f*)
Penney, *Re:* Penney *v.* Lancaster, 1666, n. (*g*)
Percy *v.* Percy, 139, n. (*s*)
Perkins, *Re:* Perkins *v.* Perkins, 1520, n. (*s*)
Peter *v.* Nicolls, 231, n. (*b*)

Peterborough Water Bill, *Re*, 2080, n. (*i*)
Peterson *v.* Peterson, 1665, n. (*d*); 1668, n. (*h*); 1896, n. (*a*); 1982, n. (*m*)
Phillips *v.* Homfray, 701, n. (*q*)
Physick *v.* Harvey, 199, n. (*x*)
Pickering *v.* Ilfracombe Ry. Co., 1768, n. (*u*)
Pilcher *v.* Rawlins, 735, n. (*h*)
Pine, *Re:* Pine *v.* Ellis, 1930, n. (*o*)
Plant *v.* Daniell, 888, n. (*e*)
Plumley *v.* Brownlow, 272, n. (*x*)
Pole *v.* Leask, 1694, n. (*h*)
Poole *v.* Barker, 1414, n. (*q*)
Poppelwell *v.* Wright, 1044, n. (*z*)
Portland (Duke of) *v.* Topham, 1628, n. (*g*); 1635, n. (*r*); 1640, n. (*z*); 1648, n. (*l*); 1652, n. (*p*); 1653, n. (*r*); 1654, n. (*x*); 1656, n. (*a*)
Potter, *Re*, 1978, n. (*i*)
— *v.* Roker, 1906, n. (*t*)
Poulett (Earl) *v.* Somerset, 886, n. (*c*)
Powell, *Re:* Tompkins *v.* Phelps, 1370, n. (*d*)
Powis *v.* Adams, 1933, n. (*t*)
Prance *v.* Culloch, 2121, n. (*a*)
Pratt *v.* Jenner, 700, n. (*p*)
Praugnall, *Re:* Cleverly *v.* Cleverly, 1230, n. (*x*)
Price *v.* Hutchinson, 1049, n. (*m*), 1050, n. (*n*)
— *v.* Neath & Brecon Ry. Co., 424, n. (*f*)
Priddle v. Wood, 666, n. (*z*)
Pride *v.* Bubb, 236, n. (*a*)
Pritchard *v.* Imperial Gas Co., 826, n. (*y*)
Pugh *v.* Beal, 1884, n. (*t*)
Pym *v.* Pym, 1345, n. (*p*)

R.

Rantzen *v.* Rothschild, 676, n. (*k*)
Ratcliffe *v.* Barnard, 1673, n. (*k*)
Rawlinson *v.* Moss, 1575, n. (*x*)
— *v.* Stringer, 413, n. (*y*); 420, n. (*e*); 959, n. (*t*)
Reece, *Re:* Gould *v.* Dummett, 1575, n. (*x*)
Renwick *v.* Hackworth, 1456, n. (*k*)
Reveley, *Re*, 2070, n. (*r*)
Richards *v.* French, 735, n. (*h*)
Richardson *v.* Chambers, 224, n. (*q*)
Richmond *v.* Richmond, 1665, n. (*d*)
Ridgway *v.* Graves, 698, n. (*n*)
— *v.* Ridgway 737, n. (*i*); 1665, n. (*d*); 1666, n. (*f*); 1773, n. (*b*)
Ridler *v.* Dunn, 470, n. (*c*)
Ridsdale *v.* Atlantic & G. W. Ry., 552, n. (*d*)
Rimington, *Re*, 2064, n. (*f*); 2070, n. (*s*)
Ring *v.* Miles, 1906, n. (*t*)
Rishton *v.* Grissell, 621, n. (*w*)
Roberts, *Re*, 2186, n. (*e*); 2188, n. (*l*)
Robertson *v.* Wynch, 1809, n. (*f*)
Robinson *v.* Cambrian Rys. Co., 1613, n. (*m*); 1615, n. (*o*)
— *v.* Pearson, 1116, n. (*z*)
Romilly *v.* Nicholls, 1873, n. (*z*); 1874, n. (*f*); 1878, n. (*k*); 1879, n. (*n*); 1880, n. (*o*); 1881, n. (*p*)
Rothery *v.* Fitzsimons, 1119, n. (*c*); 1120, n. (*d*)
Row *v.* Row, 254, n. (*p*)
Rowland v. Evans, 1369, n. (*c*)
Royal British Bank, *Re*, 911, n. (*h*)
Rudge *v.* Winnall, 1496, n. (*p*)
Rumsey *v.* Rumsey, 1575, n. (*x*)
Rundle *v.* Rundle, 1665, n. (*d*)
Rush, *Re*, 915, n. (*p*); 916, n. (*q*); 951, n. (*m*); 956, n. (*q*); 2008, n. (*t*); 2013, n. (*e*)
Russell *v.* Plaice, 1347, n. (*t*)
Ryves *v.* Attorney General, 151, n. (*i*)

S.

Sadler *v.* Maugham, 257, n. (*s*)
St. John *v.* Harrison, 264, n. (*l*)
Salter *v.* Tildesley: *Re* Wesson, 1150, n. (*r*); 1221, n. (*g*)
Saltzbacher *v.* Solomon, 134, n. (*l*)
Sanford, *Re*, 2151, n. (*y*)
Sanger *v.* Sanger, 653, n. (*l*)
Sartoris *v.* Sartoris, 1472, n. (*g*)
Saull *v.* Brown, 1153, n. (*x*)
— *v.* Godfrey, 244, n. (*b*)
Saunders *v.* Mackeson, 793, n. (*h*); 803, n. (*e*)
Savage *v.* Snell, 1963, n. (*y*)
Sayers *v.* Sturt, 1055, n. (*i*); 1088, n. (*d*)
Scott, *Re*, 1030, n. (*e*)
— *v.* Amey, 308*, n. (*l*)
— *v.* Falkner, 245, n. (*c*)
— *v.* Stanford, 1762, n. (*o*)
Sculthorpe *v.* Tipper, 608, n. (*f*)
Secretary of State for India *v.* Meffan, 173, n. (*j*)
Seaton, *Re:* Northern Investment Co. *v.* Seaton, 1206, n. (*e*)
Seixo *v.* Provezende, 1771, n. (*z*)
Selby *v.* Cooling, 1347, n. (*t*)
Senior *v.* Senior, 199, n. (*x*); 1967, n. (*c*)
Sharman *v.* Green, 544, n. (*y*)
Sharp *v.* Wright, 1231, n. (*z*)
Shaw *v.* Wilson, 1673, n. (*l*)

Sheffield Waterworks *v.* Yeomans, 497, n. (*p*)
Sheild *v.* Taylor, 1701, n. (*z*)
Shepherd *v.* Allen, 308†, n. (*f*)
— *v.* Shepherd, 498, n. (*q*)
Sheppard *v.* Turner, 1759, n. (*l*)
Shrewsbury (Earl of) *v.* Trappes, 1575, n. (*x*)
Sieber *v.* Sieber, 363, n. (*n*)
Simcox, *Re*, 2078, n. (*f*)
Simmons *v.* Rose: *Re* Ward, 1881, n. (*p*)
— *v.* Simmons, 126, n. (*e*)
Simpson v. Grey, 309, n. (*t*)
Simson *v.* Raven, 1616, n. (*r*)
Skeene *v.* Davies, 88, n. (*t*)
Slater *v.* Du Putron, 1668, n. (*h*)
Slattery *v.* Axton, 2199, n. (*d*); 2202, n. (*g*)
Small *v.* Pratt, 931, n. (*q*)
Smalley *v.* Marsh, 308, n. (*i*); 399, n. (*i*)
Smedley *v.* Smedley, 308*, n. (*u*); 1937, n. (*c*)
Smith *v.* Allison, 501, n. (*t*)
— *v.* Guire, 1665, n. (*d*)
— *v.* Matthews, 2225, n. (*b*)
— *v.* Pover, 309, n. (*s*)
— *v.* Smith, 1452, n. (*g*)
— *v.* Wheelhouse, 711, n. (*d*)
Soames *v.* Edge, 2229, n. (*h*)
Soffe *v.* Prince, 840, n. (*c*)
Solomon *v.* Cohen, 684, n. (*v*)
Southampton Boat Co. *v.* Rawlins, 790, n. (*d*); 803, n. (*e*)
Sparling *v.* Brereton, 486, n. (*d*)
Speight *v.* Walton, 118, n. (*u*)
Spence *v.* Woolhouse, 231, n. (*l*)
Spokes *v.* Banbury Board of Health, 1765, n. (*r*); 1791, n. (*c*)
Stamp *v.* Anderson, 791, n. (*f*)
Stanford *v.* Roberts, 1994, n. (*z*)
Staniland *v.* Staniland, 1983, n. (*o*)
Stanley, *Re:* Legg *v.* Newman, 1665, n. (*d*)
Statham *v.* Storer, 932, n. (*r*)
Steele *v.* Midland Ry., 197, n. (*s*)
Stephen *v.* Stephen, 2226, n. (*c.*)
Stephenson *v.* Mackay, 679, n. (*o*)
Sterry *v.* Truss, 1766, n. (*s*)
Stockbridge Ry. Bill, *Re*, 2081, n. (*l*)
Strong v. Hart, 1385, n. (*c*)
Sturgis *v.* Morse, 1575, n. (*x*)
Sullivan *v.* Plimpton, 1770, n. (*y*)
Sutton, *Re*, 1208, n. (*n*)
Swansea Valley Ry. Co. *v.* Budd, 238, n. (*b*)
Swift *v.* Wenman, 287, n. (*m*)
Swindell *v.* Wardell, 272, n. (*x*)
Swinnerton *v.* Pretyman, 793, n. (*h*)
Symons *v.* De Barros, 456, n. (*k*)
— *v.* Symons, 104, n. (*l*)

T.

Tadman *v.* Smith, 308*, n. (*t*)
Tayler, *Re*, 1506, n. (*dd*)
— *v.* Tayler, 1223, n. (*l*)
Taylor *v.* Forbes, 541, n. (*s*); 574, n. (*k*); 577, n. (*o*)
Teed *v.* Purnell, 791, n. (*f*)
Teil, *Re:* Teil *v.* Barlow, 1611, n. (*e*)
Tempest *v.* Lord Camoys, 504, n. (*k*); 2256, n. (*f*)
Tench *v.* Cheese, 1810, n. (*g*)
Thexton, *Re:* Thexton *v.* Edmondson, 1983, n. (*o*)
Thomas, *Re*, 2143, n. (*i*)
— *v.* Lewis, 375, n. (*c*)
— *v.* Rawlings, 1719, n. (*x*)
— *v.* Sawyer, 681, n. (*s*)
Thorpe *v.* East, 728, n. (*u*)
Titley, *Re*, 2078, n. (*f*)
Tomkins *v.* Phelps: *Re* Phelps, 1370, n. (*d*)
Toone *v.* Baker, 1464, n. (*t*)
Tooting, &c., Ry., *Re*, 2092, n. (*f*)
Trevena *v.* Juliff, 1488, n. (*e*)
Trickett *v.* Husler, 692, n. (*c*); 716, n. (*c*)
Troup *v.* Ricardo, 308†, n. (*n*); 1591, n. (*y*)
Tulloch *v.* Tulloch, 1366, n. (*y*)
Tunstall *v.* Bartlett, 799, n. (*a*)
Turner *v.* Cooke, 647, n. (*g*)
Tweedie *v.* Phelps, 308†, n. (*z*)

U.

Underwood *v.* Secretary of State for India, 1575, n. (*x*)
United States of America *v.* Ferguson, 641, n. (*i*)
— *v.* Prioleau, 171, n. (*h*); 1695, n. (*i*)
Upton *v.* Upton, 1933, n. (*t*)

V.

Venables *v.* Farmer, 1847, n. (*h*); 1851, n. (*m*)
Verelst, *Re*, 2067, n. (*m*)
Vestris *v.* Hooper, 684, n. (*v*)
Veysey, *Re*, 1153, n. (*x*)

W.

Waggett *v.* Cutbush, 6, n. (*f*)
Waite *v.* Morland, 1983, n. (*o*)
Walford *v.* Walford, 1660, n. (*i*)
Walker *v.* Daniell, 634, n. (*k*)
— *v.* Walker, 845, n. (*k*)
Walters *v.* Webb, 497, n. (*p*)
Walton Shore Road, *Re*, 2120, n. (*z*); 2135, n. (*u*)

Ward, *Re:* Simmons *v.* Rose, 1881, n. (*p*)
Warner & Powell, *Re*, 2135, n. (*u*)
Warrant Finance Co., *Re*, 2203, n. (*i*); 2205, nn. (*q*), (*s*)
Warren *v.* Rudall, 1428, n. (*g*)
Waterhouse *v.* Cheeseman, 1134, n. (*x*)
Waterson *v.* Fowler, 1760, n. (*m*)
Watkins *v.* Thomas, 1183, n. (*p*)
Watson *v.* Griffith, 875, n. (*o*)
— *v.* International Bank, Limited, 1700, n. (*q*)
Wayte *v.* Spooner, 618, n. (*r*)
Webster *v.* Brown, 1889, n. (*a*)
— *v.* Hartmont, 315, n. (*g*)
Weeding *v.* Weeding, 1901, n. (*g*)
Wells *v.* Hall, 1385, n. (*c*)
— *v.* Pratt, 254, n. (*p*)
Wesson, *Re:* Salter *v.* Tildesley, 1150, n. (*r*); 1221, n. (*g*)
West *v.* West, 274, n. (*y*)
Weston, *Re*, 2164, n. (*e*)
— *v.* Weston, 705, (*u*)
Whipham *v.* Whipham, 1864, n. (*m*)
Whitaker *v.* Newman, 398, n. (*i*)
White *v.* Young, 1665, n. (*d*)
Whiteboase *v.* Cross, 1993, n. (*y*)
Whitehead *v.* Haynes, 608, n. (*f*)
Whitney *v.* Smith, 216, n. (*b*)
Wickham *v.* Webster, 1132, n. (*t*)
Wilkes *v.* Dudley Union, 740, n. (*m*)
Wilkinson, *Re*, 2064, n. (*e*)
Williams, *Re:* Morgan *v.* Nicholas, 2194, n. (*y*)
Williams *v.* The Attorney General, 1827, n. (*g*); 2232, n. (*l*)
— *v.* Games, 308, n. (*z*)
— *v.* Glenton, 1610, n. (*d*)
— *v.* Metropolitan Ry., 737, n. (*i*)
Willoughby, *Re:* Beresford *v.* Cane, 1665, n. (*d*)
Willwey, *Re*, 2190, n. (*o*)
Wilson, *Re*, 2017, n. (*o*)
Wilson *v.* Furness Ry., 497, n. (*p*)
— *v.* Gray, 202, n. (*b*)
— *v.* Natal Investment Co., 1323, n. (*r*)
— *v.* Simpson, 841, n. (*d*)
Wilton *v.* Hill, 657, n. (*p*)
Winch *v.* Lumb, 1825, n. (*c*)
Winder *v.* Winder, 1987, n. (*q*)
Wintour *v.* Clifton, 810, n. (*o*)
Witham *v.* Humber Iron Works, 791, n. (*f*)
Wood, *Re:* Manley *v.* McCauley, 1128, n. (*p*)
— *v.* Fobert: *Re* Fobert, 1206, n. (*c*)
— *v.* Heardern, 231, n. (*n*)
— *v.* Mercer, 550, n. (*c*)
— *v.* Scoles, 1321, n. (*n*)
Wooding *v.* Wooding, 676, n. (*k*)
Woolatt *v.* Sinclair, 1761, n. (*n*)
Woolmer *v.* Hirtzel, 1128, n. (*p*); 1453, n. (*h*)
Wools, *Re*, 2015, n. (*i*)
Worcester Park Buildings Co. *v.* Hector, 544, n. (*y*)
Worms *v.* Smith, 378, n. (*e*)
Wright, *Re*, 1747, n. (*s*)
— *v.* India Rubber Co., 692, n. (*e*)
— *v.* Larmuth, 1551, n. (*a*)

Y.

Yeatman *v.* Read, 874, n. (*n*)
Yonge *v.* Furse, 1373, n. (*n*)
Young *v.* Bliss, 1989, n. (*t*)
— *v.* Fernie, 1053, n. (*f*); 1054, n. (*g*)

Z.

Zambaco *v.* Cassavetti, 1939, n. (*e*)

ADDENDA ET CORRIGENDA.

NUMBER

9, n. (*i*), last line but one, For "47, 52," read "47—52."

55, 60, 197, 483, 497, 621, 833, 848, 1123, 1137, 1161, 1196, 1197, For "Stuart," read "Wickens."

100, n. (*m*) For "742," read "142."

218, n. (*e*), last line, *Dele* "V. C. S."

308 For "HOLLOWAY PRISON:—To the keeper of our Prison called The City of London Prison at Holloway," read "HOLLOWAY PRISON:—To the keeper of our Prison called Holloway Prison,"

317, 387—391, 395, 398, 401 (and marginal), 402, 403, 415, 449, 455, 456, 475, 627, 766—768, 770, 810, 817, 818, 939, 940, 942, 949, 1048a, 1050, 1169, 1186, 1187. } For "the City of London Prison at Holloway," read "Holloway Prison,"

449 *Dele* all the words following "answer"; and add to n. (*c*), "But *see Hall v. Hall*, Law Rep. 11 Eq. 290, V.C.S.

1060, n. (*n*) *Add* "By the 34 & 35 Vic. c. 2, s. 22 of The Juries' Act, 1870, is repealed from the 28 Feb. 1871; but neither Act is to affect any right to payment which any juror would have had if neither Act had been passed."

1234, par. 8, The word "substituting" should be in *italic* type.

1263, n. (*y*) *Dele* "Mr. W. Hayes (No. 4, New Square);" and after "Mr. J. H. Dart (No. 4, New Square)," insert "Mr. J. Waley (No. 8, Old Square);"

1383, lines 8 and 12, For "John Stuart," read "Richard Malins."

1413, n. (*k*) Add, at foot of the Table,

34 & 35 Vic. c. 21, s. 3 | 1871 | 1872 | Six.

1413 Alter the *second* reference in this Form to n. "(*k*)," and the corresponding foot-note, to "(*k k*)."

1515, n. (*p*) Add "The following notice has been recently set up in the Rolls' Chambers:—'The Master of the Rolls directs that any party dissatisfied with a certificate as settled by the Chief Clerk, and intending to apply by motion or summons to vary such certificate, shall, before such certificate is signed by the Chief Clerk, carry into Chambers a short statement in writing of his objections thereto—Rolls, 4 March, 1871.'"

1516, marginal, For "notice," read "note"

1597, 1599, 1787, 1792 } For "the City Prison at Holloway," read "Holloway Prison,"

1862 The Form following this should be numbered 1863.

1908 Between lines 22 and 23, insert (above the signatures of the commissioners), "As witness our hands this —— day of ——, 187—."

2029, n. (*m*) For "1863," read "1869."

2074 Between lines 23 & 24, insert (above the signature of the examiner), "As witness my hand this —— day of ——, 187—."

FORMS AND PRECEDENTS.

CHAPTER I.

GENERAL FORMS.

SECTION I.—REFERENCE TO THE RECORD.—INDORSEMENT OF NAME AND ADDRESS ON PROCEEDINGS.

1. Reference to the Record (a)

EVERY decree, order, report, certificate, petition, or document, made, presented, or used in any cause commenced on or since the first day of Michaelmas Term, 1852, must be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause is dis-

(a) The use of the "Reference to the Record" by the practitioner will be found of mutual advantage to himself and the officers of the Court: as it will afford great facility in searching for records, and answering inquiries respecting causes. Every original bill filed since the 28th of October, 1842, has been marked with the year, letter, and number. For the purpose, therefore, of facilitating searches and inquiries respecting any suit which has been instituted since that date, it is desirable that the practitioner should give the "Reference" to the entry of such suit: in like manner as to a suit instituted in or since Michaelmas Term, 1852. In suits commenced by administration summons between the 28th of October, 1852, and the end of the year 1855, the "Reference" is not by year, letter, and number, but to the volume and page of the book in which such summonses have been entered in the Record and Writ Clerks' office; and such "Reference" can be ascertained by searching under the surname of the deceased person whose estate is to be administered, in the second alphabetical index contained in a printed list kept in the Record and Writ Clerks' office, and open to inspection. Since the year 1855, suits by administration summons have been indexed by the name of the person whose estate is to be administered; and are distinguished by the year, letter, and number: in like manner as other causes. Other summonses originating proceedings in Chambers, duplicates whereof have been filed at the Record and Writ Clerks' office, are entered in the cause books under the leading title of the "Matter"; and are distinguished by the like "Reference": Braithwaite's Pr. 14, 15.

tinguished in the cause books kept by the Clerks of Records and Writs (*b*); as thus:

1871. A. No. 50.

The symbols used are placed on the first page of the document: either at the top, or in the left-hand margin, near the top.

2.

Certificate that cause was commenced before M.T. 1852 (*c*).

I certify that this cause was commenced previously to the first day of Michaelmas Term, 1852.

A. B., Plaintiff's solicitor.

[*Or*, Solicitor for defendant C. D.]

3.

Indorsement, on writs and other proceedings, of name and address, etc. of solicitor suing out or leaving same at Record and Writ Clerks' office (*d*).

Name or Firm; as: John Jones—*Or*, Jones & Styles:

Place of business; as: of No. 600, Edgeware Road, in the county of Middlesex:

If the place of business is more than three miles from the Record and Writ Clerks' office, add an address for service within that distance; as: whose address for service is at the office of Mr. Charles Robinson, No. 437, Cheapside, in the city of London:

If the Solicitor is only agent for another Solicitor, add the name or firm and place of business of the principal Solicitor; as: Agent for Thomas Smith—*Or*, Smith & Brown—of Lynn, in the county of Norfolk:

Name of client; as: Solicitor for the plaintiff [*Or*, defendant George Bruce—*Or*, George Bruce, above named—*Or*, George Bruce, within named—*or as may be*].

4.

Another form thereof (*d*).

John Jones, of No. 600, Edgeware Road, Middlesex (Address for service, at the office of Mr. Charles Robinson, No. 437, Cheapside, London), Agent for Thomas Smith, of Lynn, Norfolk, Solicitor for the plaintiff [*or as may be*].

5.

The like, of joint solicitors (*e*).

John Jones, of No. 600, Edgeware Road, Middlesex, and Charles Robinson and Edward Williams (firm, Robinson and Williams), of No. 437, Cheapside, London, joint Solicitors for the

(*b*) Ord. I. 48, 51; Dan. Pr. 326; and *post*, No. 196. In practice, this provision is applied also to "matters" originated by summons: Braithwaite's Pr. 14, n.

(*c*) A certificate to this effect, signed by the solicitor, is required by the Registrar to be indorsed on the brief, on bespeaking a decree or order in suits before Michaelmas Term, 1852: see Reg. Regul. 15 Mar. 1860, r. 19; Ord. I. 48, 51; Dan. Pr. 870, n. (*k*).

(*d*) See Ord. III. 2; Dan. Pr. 378, 379.

(*e*) Ord. III. 2; Dan. Pr. 378, 379. An agent cannot act as such in filing a

plaintiff, *&c.;* and whose joint address for service is at the office of the said John Jones, No. 600, Edgeware Road, aforesaid.

Or, John Jones, of No. 600, Edgeware Road, Middlesex, Agent for Smith & Brown, of Lynn, Norfolk, and for Jones & Robinson, of Norwich, Norfolk, joint solicitors for the plaintiff, *&c.*

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6. Indorsement, on writs and other proceedings, of name and residence, etc. of party suing out or leaving same at Record and Writ Clerks' office in person (*f*).

Name; as: James Williams, the plaintiff [*Or,* defendant—*Or,* within named—*Or,* above named], in person:

Place of residence; as: of Blank Cottage, Lewisham, in the County of Kent:

If the residence is more than three miles from the Record and Writ Clerks' office, add an address for service within that distance; as: and whose address for service is at the office of Mr. Daniel Hughes, No. 400, Chancery Lane, in the County of Middlesex.

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7. Another form thereof (*g*).

James Williams, of Blank Cottage, Lewisham, Kent (Address for service, at office of Mr. Daniel Hughes, No. 400, Chancery Lane, Middlesex), the plaintiff [*or as may be*] in person.

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bill, or defending a suit, for a solicitor resident out of the jurisdiction. Two solicitors, though not in partnership, or two distinct firms of solicitors, may act for the same party; but if they act as principal solicitors, they must unite in giving one common address for service, in addition to their own respective addresses; and if they act by an agent, they must unite in employing the same agent: Braithwaite's Pr. 9; and see Dan. Pr. 324, n. (*p*). Where separate solicitors, or firms of solicitors, have appeared separately for several defendants, they cannot unite in filing a joint answer for such defendants collectively: as the indorsement of the name, &c., of one solicitor, or firm of solicitors, only, is allowed on the answer. Where it is desired to file such joint answer, an order must first be obtained to change solicitors: so as to entitle one solicitor, or firm, to represent all the defendants included in the answer: see Braithwaite's Pr. 9. As to the change of a solicitor or agent, see *post,* Chap. XLIV.

(*f*) See Ord. III. 5; Dan. Pr. 379, 380. Where the plaintiff, a married woman suing by her next friend, obtained an order to sue in person by her next friend, instead of acting by a solicitor, the subsequent proceedings were indorsed or subscribed: "A. B., the plaintiff, and C. D., her next friend, in person—Address for service, at," &c.; *Moye* v. *Bateman,* cited Braithwaite's Pr. 10. Where three defendants appeared in person, the Court directed that one set of notices for all the defendants, instead of one set for each, should in future be left at their common address for service: *Waggett* v. *Cutbush,* M. R. 2nd May, 1863: *Ex. rel.* Mr. King (Registrar).

(*g*) Ord. III. 5; Dan. Pr. 379, 380.

8.

Notice of change of place of business or residence, or of address for service (*h*).

(*Short title, and reference to the record.*)

Take notice, that my place of business
Or, place of residence—*Or*, address for service
is now at (*State where; as:* Minerva Chambers, Blank Street, in the City of London), instead of at (*State where; as:* No. 600, Edgeware Road, Middlesex).

Dated this —— day of ——, 187—.

A. B., solicitor [*Or*, agent] for the plaintiff, *&c.*—*Or*,
A. B., the plaintiff, *&c.*, in person.

To the Clerk of Records and Writs; and
To Mr. C. D., solicitor [*Or*, agent] for the defendant E. F. [*or as may be*].

(*h*) See Dan. Pr. 380, n. (*c*).

Section II.—Affidavits, Oaths and Jurats—Affirmations, Declarations and Affirmats.

1. *Affidavits, and Oaths and Jurats thereto* (*i*).

In Chancery.
(*Title of cause or matter* (*l*), *and reference to the record* (*m*).)

[I,

9. Formal parts of an affidavit: one deponent (*k*).

(*i*) As to the material contents of affidavits in particular cases, see *Index*, Affidavit. As to taking an affidavit off the file for scandal, or expunging scandalous matter therefrom, see Dan. Pr. 293, *et seq.*, 789; and *post*, Nos. 61, *et seq.*; and Chap. XXIX. As to impertinent or unnecessary matter, see Ord. XXXV. 60; XL. 9—11; Dan. Pr. 292, *et seq.*, 789, 790. As to the costs of getting affidavits settled by counsel, see Ord. XL. 17; Dan. Pr. 796. As to printing affidavits, see Dan. Pr. 797—799; and *post*, Chap. XXII. As to obtaining office and other copies, see Dan. Pr. 794—796. As to affidavits of service, see *post*, Nos. 47, 52; and as to affidavits generally, see Dan. Pr. 786—799.

(*k*) Every affidavit should be fairly written upon foolscap paper, book-wise; but the Clerks of Records and Writs may receive and file an affidavit written otherwise, if, in their opinion, the circumstances of the case render such reception and filing desirable or necessary: Ord. 6 Mar. 1860, r. 16; Dan. Pr. 790. The affidavit may also be either printed or lithographed, on like paper; dates and sums may be written either in words or in figures: except that, if the affidavit is to be used in the Accountant-General's office, sums should be written in words. Every quotation should be placed between inverted commas: Dan. Pr. 790; Braithwaite's Oaths in Chan. 42. The Clerks of Records and Writs may refuse to file any plea, answer, or affidavit in which there is any knife-erasure; or which is blotted so as to obliterate any word; or which is improperly written; or so altered as to cause any material disfigurement; or in which there is any interlineation: unless the person before whom it is sworn authenticates such interlineation with his initials, so as to show that it was made before the plea, answer, or affidavit was sworn, and so as to mark the extent of such interlineation: Ord. I. 36; Dan. Pr. 596, 645, 790. For form of consent to affidavit being filed notwithstanding this rule has not been complied with, see *post*, No. 44.

(*l*) The affidavit must be headed "In Chancery"; and be correctly intituled in the cause or matter in which it is made. The full title should be set forth: Dan. Pr. 788; Braithwaite's Pr. 339; but the Record and Writ Clerk will file an affidavit with an abridged form of title; as thus: "Between John Jones, and others, plaintiffs; Thomas Styles, and others, defendants." As to rectifying mistakes in the title, see Dan. Pr. 788; and for form of consent to the affidavit being filed notwithstanding such mistake, see *post*, No. 44.

(*m*) As to the reference to the record, see *ante*, No. 1.

I, A. B. (*n*), of (*Place of residence, and description or addition* (*o*)), make oath and say (*p*), as follows (*q*) :

1.

2.

Sworn (*&c.: see post*, No. 12).

(*n*) The full christian and surnames, or title of honour, of the deponent should be stated. A married woman should be described as such, and the christian and surnames of her husband be stated. All affidavits must be taken and expressed in the first person of the deponent: otherwise, the solicitor, party, or person, filing the affidavit will not be allowed, on taxation, the costs of preparing and filing the same: Ord. XVIII. 1, 2; Dan. Pr. 789.

(*o*) The true place of residence, and description or addition of the deponent must be inserted: Dan. Pr. 788; as thus: of No. 80, Belgrave Square, in the county of Middlesex, esquire—*Or*, of No. 112, Cheapside, in the city of London (clerk to Mr. E. F., of the same place), gentleman, the solicitor in this cause [*Or*, matter] for the plaintiffs—*Or*, defendant A. B. If the deponent is a party, or *quasi* party, to the suit or proceeding, or is named in a decree, order, or Chief Clerk's certificate made therein, his identity should be shown in the introductory part of the affidavit; as thus: one of the above named plaintiffs—*Or*, one of the above-named defendants—*Or*, the petitioner named in the petition presented in this cause [*Or*, matter] on the —— day of ——, 187—*Or*, who, by an order in this cause [*Or*, matter] dated the —— day of ——, 187—, had liberty to attend the proceedings—*Or*, in the decree [*Or*, order—*Or*, Chief Clerk's certificate] in this cause [*Or*, matter] dated the —— day of ——, 187—, named. A party to the cause may, however, describe himself as "the above named plaintiff," or "the above named defendant," without specifying any residence or addition, or other description: Dan. Pr. 788; Braithwaite's Pr. 339; Braithwaite's Oaths in Chan. 40. A similar rule prevails at law: Chitty's Forms, 897, n. (*e*).

(*p*) As to the necessity of these words, see Dan. Pr. 789.

(*q*) Every affidavit must be divided into paragraphs, and every paragraph numbered consecutively, and, as nearly as may be, confined to a distinct portion of the subject; and each statement in an affidavit must show the means of knowledge of the person making such statement: 15 & 16 Vic. c. 86, s. 37; Ord. 5 Feb. 1861, r. 23; Dan. Pr. 789. There is no occasion to commence each paragraph with "that," or, "I say that," or, "and I further say that." A schedule referred to in an affidavit as "hereunder written" should be placed after the jurat; but a schedule referred to as "the schedule [*Or*, the first, &c., schedule] set forth in this my affidavit," should be placed before the jurat: Dan. Pr. 791. The schedules may also be embodied in the affidavit: *ib.* A document may be referred to in an affidavit either as an exhibit, thus: "produced and shown to me at the time of swearing this my affidavit, and marked with the letter A." (or, briefly, "now produced and shown to me, and marked A.") ; or as "hereunto annexed." In the former case, the person before whom the affidavit is sworn must inquire whether the deponent has seen the document, and is aware of the contents thereof: in the latter, the document should be annexed to the affidavit at the time it is sworn; and the affidavit

10.

Foot note to an affidavit (*r*).

This affidavit is filed on the part and behalf of the plaintiffs [*Or*, defendants—*Or*, petitioners—*Or*, respondents—A. B., and C. D.—*or as may be*].

E. F., Solicitor for the said plaintiffs [*Or*, defendants—*Or*, petitioners—*Or*, respondents].

11.

Formal parts of an affidavit: two or more deponents (*s*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

We, A. B., of (*Place of residence, and description or addition*), and C. D., of (*Place, &c.*), severally make oath and say, as follows:

1.

2.

Or, severally make oath and say:

And first I the said A. B., for myself say, as follows:

1.

2.

And I the said C. D., for myself say, as follows:

3.

4.

And we the said A. B., and C. D., further severally say, as follows:

5.

6.

Sworn (*&c.: see post*, No. 13).

Foot note.

This affidavit (*&c.: ante*, No. 10).

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cannot properly be filed without it. It is, therefore, generally more convenient not to refer to a document as "hereunto annexed": Dan. Pr. 791; Braithwaite's Oaths in Chan. 44; and if intended to be used at Chambers, it must not be so referred to: Regul. 8 Aug. 1857, r. 11; Dan. Pr. 791. Any document referred to must be distinguished by some mark placed upon it, and be signed by the person before whom the affidavit is sworn: Dan. Pr. 791; and see *post*, No. 43.

(*r*) A memorandum to this effect is required to be written at the foot of every affidavit or affirmation before it can be used as evidence: Ord. 5 Feb. 1861, r. 18; Prel. Ord. 10 (6); Dan. Pr. 794.

(*s*) See notes to No. 9, *ante*.

12.

Ordinary forms of oath and jurat: one deponent (*t*).

To the deponent: Is that your name and handwriting?
You do swear that the contents of this your affidavit are true—So help you God (*u*).

Jurat (*x*):

Sworn (*Or, if the deponent is not the only one to the affidavit, say:* Sworn by the deponent A. B.) at (*State where; as:*

(1) Before a Chief Clerk.

the Chambers of the Master of the Rolls, in Rolls Yard, Chancery Lane, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Stuart, in Old Square, Lincoln's Inn, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Malins, in Stone Buildings, Lincoln's Inn, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Bacon, in New Square, Lincoln's Inn, in the County of Middlesex,

Or,

(2) Before a Taxing Master.

my office, in Staple Inn, in the County of Middlesex,

[*Or,*

(*t*) As to the persons before whom an affidavit may be sworn, and their fees, see Dan. Pr. 646, *et seq.*, 786 *et seq.*; and *post*, No. 40. Where a schedule is placed after the jurat, the officer before whom the affidavit is sworn must sign his name at the end of the schedule, or of each schedule, as well as to the jurat; and he should add to his signature his official title, or an abridgement of it; as thus: "Chief Clerk"—or, "a Commissioner, &c."

(*u*) See Braithwaite's Pr. 379; Braithwaite's Oaths in Chan. 26, 32. The like form is used in the case of a peer: Braithwaite's Oaths in Chan. 33. A Christian swears on the Holy Evangelists: except in cases within the 1 & 2 Vic. c. 105 (see *post*, No. 23); a Jew upon the Pentateuch. A complete Testament need not be used in either case. A Christian, in making oath, holds the book in his or her right hand: the hand being uncovered, and, in the case of a male person, the head being uncovered also. A Jew, in making oath, holds the book in his right hand, the hand being uncovered, but the head covered; if, however, the Jew wishes to make oath with his head uncovered, the officer cannot object to it: Dan. Pr. 638; Braithwaite's Oaths in Chan. 25. Oaths are to be administered in a reverent manner: Ord. XIX. 14.

(*x*) The jurat should be written at the end of the affidavit. It is usually placed at the right-hand corner; but may be written on either side of the page, or, if necessary, in the margin; but not on a page upon which no part of the statements in the affidavit appears: Dan. Pr. 792. It must also express

A. B. (*y*).

Or,
the Record and Writ Clerks' office, Chancery Lane, in the County of Middlesex, (3) Before a Record and Writ Clerk.

Or,
the Inrolment Office, Chancery Lane, in the County of Middlesex, (4) Before the Clerk of Inrolments.

Or,
my office, No. 5, New Square, Lincoln's Inn, in the County of Middlesex, (5) Before a London Commissioner.

Or,
Louth, in the County of Lincoln, (6) Before a Country Commissioner.

Or,
St. Heliers, in the Island of Jersey, (7) Before a Channel Islands' Commissioner.

Or,
No. 300, Princes Street, in the City of Edinburgh, (8) Before a Scotch Commissioner.

Or,
No. 400, Montpelier Street, in the City of Dublin), (9) Before an Irish Commissioner.

(*State when; as:* this —— day of ——, 187—),
before me (*z*),
C. D. (*a*),
Chief Clerk (*a*).

[*Or*,

the time when, and the place where, the affidavit is sworn, including the name of the city, borough, or county: Ord. IV.; Dan. Pr. 792. An affidavit, or any other document sworn to, may be re-sworn at any time before it is filed. If, on re-swearing, a second jurat is given, commencing with the word "Re-sworn," then the first jurat should not be struck out, or in any manner interfered with; but if the second jurat commences with the word "Sworn" —in other words, if the jurat on the reswearing is such as is used when a document is first sworn to—then the first jurat must be struck out, and the striking out be authenticated by the initials of the Commissioner before whom the affidavit is last sworn: Braithwaite's Pr. 345; Dan. Pr. 645.

(*y*) The deponent must sign his name, or make his mark, at the side of the jurat: not underneath it: Dan. Pr. 792. For the special form required in the case of a marksman, see *post*, Nos. 21, 22.

(*z*) These words are essential: see Dan. Pr. 792, n. (*z*).

(*a*) The person before whom the affidavit is sworn must sign his name at the foot of the jurat: to which must be added his full official character and description; but not necessarily in his own handwriting: Dan. Pr. 792. The Taxing Masters, Record and Writ Clerks, and Clerk of Inrolments, do not, however, in practice, ordinarily add their official description to their names: see Dan. Pr. 648, n. (*k*).

Or, C. D.,
Taxing Master.

Or, C. D.,
C. R. & W.

Or, C. D.,
Clerk of Inrolments.

Or, C. D.,
A London Commissioner to administer Oaths in Chancery.

Or, C. D.,
A Commissioner to administer Oaths in Chancery in England.

Or, C. D.,
A Commissioner to administer Oaths in Chancery for the Channel Islands.

Or, C. D.,
A Commissioner to administer Oaths in Scotland, for the High Court of Chancery in England.

Or, C. D.,
A Commissioner to administer Oaths in Ireland, for the High Court of Chancery in England.

[*or as may be*].

13.

Ordinary forms of oath and jurat: two or more deponents sworn together (*b*).

To each deponent: Is that your name and handwriting?
To both, or all: You do severally swear that the contents of this your affidavit are true—So help you God.

A. B.
C. D. } Sworn by the deponents A. B. and C. D. at (*Continue as in* No. 12, *ante, to the end*).

(*b*) See notes to No. 12, *ante*. Where all the deponents are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered: Braithwaite's Pr. 379, n. (*a*); Braithwaite's Oaths in Chan. 32, n. (*b*). For form in such case, see No. 12, *ante*.

14.
Oath of a blind deponent, and jurat: where the officer reads to him the affidavit (*c*).

To the deponent: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
[*Or,*
The mark of
×
A. B.]

Sworn by the deponent A. B., at (*State where, and when, as in* No. 12, *ante*), before me: I having first truly, distinctly, and audibly read over to him the contents of this affidavit
(*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to):
he being blind; and he appeared to understand the same (*If a marksman, add:* and made his mark hereto in my presence).
(*Signature and style of office: see ante,* No. 12).

15.
Oaths and jurat: where a witness reads the affidavit to a blind deponent (*d*).

To the witness: Is that your name and handwriting?
You do swear that you have truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to); and that he appeared to understand the same, and signed his name [*Or,* made his mark] to this affidavit in your presence—So help you God.

To the blind man: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
[*Or,*
The mark of
×
A. B.]

Witness to the signature [*Or,* mark] of the deponent A.B:
C. D.,
of (*Residence and addition* (*e*)).

Sworn by the deponent A. B., at (*State where, and when, as in* No. 12, *ante*): C. D., the witness to the signature [*Or,* mark] of the deponent A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B.
(*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to):
he being blind; and that the deponent A. B. appeared to understand the same, and signed his name [*Or,* made his mark] to this affidavit, in the presence of the deponent C. D.:
before me (*&c.: see ante,* No. 12).

(*c*) See Dan. Pr. 792. In the case of a blind man or marksman, the affidavit must first be read over to him, either by the person before whom the affidavit is sworn, or by some other person. In the latter case, such person must first be sworn that he has read over the affidavit, and any exhibits thereto, to the deponent, and must attest his signature or mark: Dan. Pr. 792; and see *post,* No. 15.

(*d*) See last note; Braithwaite's Pr. 382; Braithwaite's Oaths in Chan. 36.

(*e*) The attestation should be written near the jurat.

16.

Ordinary form of oath of a deaf and dumb deponent, and jurat (*f*).

To the deponent: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true—So help you God.

A. B. { Sworn at (*State where, and when, as in* No. 12, *ante*), before me (*&c.: see ante*, No. 12).

17.

Oaths and jurat: where a foreigner deposes in English, through an interpreter (*g*).

To the interpreter (*h*): Is that your name and handwriting (*i*)?

You do swear that you well understand the French language [*or other language of the foreigner*]; and that you have truly, distinctly, and audibly interpreted the contents of this affidavit to the deponent A. B.; and that you will truly and faithfully interpret to him the oath about to be administered to him—So help you God.

To the foreigner, through the interpreter: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true—So help you God.

A. B. — C. D., of (*Residence, and addition* (*k*)). { Sworn at (*State where, and when, as in* No. 12, *ante*), by the deponent A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he had truly, distinctly, and audibly interpreted the contents of this affidavit to the deponent A. B.; and that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him: before me (*&c.: see ante*, No. 12).

(*f*) The procedure in this case is as follows, where the deponent is able to read and write: The officer before whom the affidavit is to be sworn should question the deponent, in writing, whether the signature placed beside the jurat is his name and handwriting, and give him the ordinary form of oath to read; he should then hand him the book, and administer the oath: pointing to the words of the oath as he proceeds; the deponent must then kiss the book, and the ceremony is complete: see Dan. Pr. 793; Braithwaite's Pr. 383; Braithwaite's Oaths in Chan. 37. As to the course where the deponent is not able to read and write, see *ib.*

(*g*) See Dan. Pr. 792; Braithwaite's Pr. 381; Braithwaite's Oaths in Chan. 35.

(*h*) The interpreter is usually a notary public; but it is not essential that he should be one: see Braithwaite's Oaths in Chan. 58, n. (*h*).

(*i*) It seems desirable, but is not, in practice, considered essential, that the interpreter should sign the affidavit: Braithwaite's Pr. 381, n. (*a*); Braithwaite's Oaths in Chan. 35, n. (*k*).

(*k*) See last note. If the interpreter does not sign the jurat, his place of

18.

Oaths and jurat, where the affidavit is in a foreign language: the oath being interpreted to the deponent (*l*).

To the interpreter (*m*): Is that your name and handwriting (*n*)?

You do swear that you well understand the French language [*or other language of the foreigner*]; and that you will truly and faithfully interpret to the deponent A. B. the oath about to be administered to him—So help you God.

To the foreigner, through the interpreter: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true —So help you God.

A. B.
—
C. D.
of (*Residence and addition* (*o*)).

Sworn at (*State where, and when, as in* No. 12, *ante*), by the deponent A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him:

before me (*&c.: see ante*, No. 12).

19.

Verification of a translation of the affidavit into English, in like case (*p*).

To the translator (*q*): Is that your name and handwriting?

You do swear that you well understand the French language [*or other language in which the affidavit is written*]; and that the above written is a true translation into the English language of the affidavit of A. B. in the French [*or as may be*] language thereunto annexed—So help you God.

C. D.

C. D., of (*Residence and addition; as:* No. 90, Cornhill, in the City of London, notary public), was sworn at (*State where, and when, as in* No. 12, *ante*), that the above written is a true translation into the English language of the affidavit of A. B. in the French [*or as may be*] language thereunto annexed, and affixed together at the top thereof under the (notarial) seal of the said C. D., with his name thereto subscribed:

before me (*&c.: see ante*, No. 12).

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residence and addition must be stated in the jurat, immediately after the first occurrence of his name.

(*l*) See Braithwaite's Oaths in Chan. 35.

(*m*) See *ante*, No. 17, n. (*h*).

(*n*) *Ibid.* n. (*i*).

(*o*) *Ibid.* n. (*k*).

(*p*) Where an affidavit is written in a foreign language, a translation into English, verified by a competent person, must be filed with the original: see Braithwaite's Oaths in Chan. 35, n. (*h*).

(*q*) It is not essential that the translator should be a notary public: Braithwaite's Oaths in Chan. 58, n. (*h*), 59, n. (*k*).

20.

Jurat to affidavit of a Hindoo, interpreted to him in English (*r*).

(Seal)
—
C. D.
of (*Residence and addition*).

Subscribed with a seal, and sworn to by the above-named A. B., at (*State where, and when, as in* No. 12, *ante*), through the interpretation of C. D.: the said C. D. having been previously sworn that he had first translated and explained to the said A. B., in the Hindostanee language, the contents of this affidavit; that the said A. B. perfectly understood the contents of this affidavit; that he the said C. D. would truly interpret the oath about to be administered to the said A. B.; and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country:

before me (*&c.: see ante*, No. 12).

21.

Oath of a marksman, and jurat: where the officer reads to him the affidavit (*s*).

To the deponent: Is that your mark?

You do swear that the contents of this your affidavit are true—So help you God.

The mark of
×
A. B.

Sworn by the deponent A. B., at (*State where, and when, as in* No. 12, *ante*), before me: I having first truly, distinctly, and audibly read over to him the contents of this affidavit (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to): and he appeared to understand the same, and made his mark hereto in my presence.

(*Signature and style of office: see ante*, No. 12.)

22.

Oaths and jurat: where a witness reads the affidavit to a marksman (*t*).

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein refered to); and that he appeared to understand the same, and made his mark to this affidavit in your presence—So help you God.

To the marksman: Is that your mark?

You do swear that the contents of this your affidavit are true—So help you God.

[Sworn

(*r*) See Braithwaite's Pr. 404; Braithwaite's Oaths in Chan. 86. For forms of Oath, see *ante*, No. 17.

(*s*) See *ante*, No. 14, n. (*c*).

(*t*) *Ibid.;* Braithwaite's Pr. 380; Braithwaite's Oaths in Chan. 33.

The mark of
×
A. B.

Witness to the mark of the said A. B.:
C. D.,
of (*Residence and addition*).

Sworn by the deponent A. B., at (*State where, and when, as in* No. 12, *ante*): C. D., the witness to the mark of the said A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B.

(*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to):

and that the deponent A. B. appeared to understand the same, and made his mark to this affidavit in the presence of the said C. D.:

before me (*&c.: ante*, No. 12).

23.

Oath of a Presbyterian, under 1 & 2 Vic. c. 105, and jurat (*u*).

To the deponent: Is that your name and handwriting?

To be uttered by the deponent: I, A. B., do solemnly and sincerely declare that

(*State in what form, and with what ceremony, an oath will be binding; as:* holding up my right hand, and declaring to the truth of this my affidavit, as I shall answer to God at the great day of judgment),

is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare that the contents of this my affidavit are true

(*Repeat the binding form; as:* as I shall answer to God at the great day of judgment).

A. B.

Sworn by the deponent A. B., pursuant to the Act 1st and 2nd Victoria, chapter 105, at (*State where, and when, as in* No. 12, *ante*),

before me (*&c.: ante*, No. 12).

24.

Oath of allegiance, under the Promissory Oaths Act, 1868 (*x*).

I, A. B., do swear (*y*) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law—So help me God.

(*u*) See 1 & 2 Vic. c. 105, s. 1; Dan. Pr. 793; Roscoe on Evid. 163; Braithwaite's Pr. 383, 384; Braithwaite's Oaths in Chan. 38. For the form of oath of a witness in Scotland, and mode of administering it, see Dickson on Evid. in Scot. s. 1970, 2nd ed.

(*x*) 31 & 32 Vic. c. 72.

(*y*) A person permitted by law to make a solemn affirmation or declaration, instead of taking an oath, may substitute the words, "solemnly, sincerely, and truly declare and affirm," for the word "swear," and omit the words, "So help me God:" see 31 & 32 Vic. c. 72, s. 11; see also 33 & 34 Vic. c. 14, s. 9.

25.

Official oath, under the Promissory Oaths Act, 1868 (*z*).

I, A. B., do swear (*a*) that I will well and truly serve Her Majesty Queen Victoria in the office of —— :—So help me God.

26.

Judicial oath, under the same Act (*z*).

I, A. B., do swear (*a*) that I will well and truly serve our Sovereign Lady Queen Victoria in the office of ——; and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will—So help me God.

---

2. *Affirmations, and Declarations and Affirmats thereto* (*d*).

27.

Affirmation by a Quaker or Moravian (*e*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*Residence, and description or addition*), being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians], do solemnly, sincerely, and truly declare and affirm as follows:

1.

2.

Affirmed (*&c.: see post*, No. 29).

28.

Foot note to an affirmation (*f*).

This affirmation is filed on the part and behalf of (*&c.: Continue as in* No. 10, *ante, to the end*).

29.

Declaration and affirmat, to affirmation by a Quaker or Moravian (*g*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do solemnly, sincerely, and truly declare and affirm that the contents of this my affirmation are true.

A. B. { Affirmed by the said A. B., at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: ante*, No. 12).

(*z*) 31 & 32 Vic. c. 72.

(*a*) See *ante*, No. 24, n. (*y*).

(*d*) See Dan. Pr. 793; and *ante*, Nos. 9—22, and the notes thereto: which apply, *mutatis mutandis*, to affirmations.

(*e*) See 9 Geo. IV. c. 32, s. 1; 3 & 4 Will. IV. c. 49; Dan. Pr. 793; Roscoe on Evid. 164; Braithwaite's Pr. 384; Braithwaite's Oaths in Chan. 47; and notes to No. 9, *ante*.

(*f*) See *ante*, No. 10, n. (*r*).

(*g*) See notes to No. 12, *ante*.

30.
Affirmation by an Ex-Quaker or Ex-Moravian, under 1 & 2 Vic. c. 77 (*h*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*Residence, and description or addition*), having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm as follows:

1.

2.

Affirmed (*&c.: see post*, No. 31).

31.
Declaration and affirmat thereto (*i*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that the contents of this my affirmation are true.

A. B. { Affirmed by the said A. B., pursuant to the Act 1st & 2nd Victoria, chapter 77, at (*State where, and when, as in* No. 12, *ante*),

before me (*&c.: ante*, No. 12).

32.
Affirmation by a Separatist, under 3 & 4 Will. IV. c. 82 (*k*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*Residence, and description or addition*), do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare as follows:

1.

2.

Affirmed (*&c.: see post*, No. 33).

(*h*) See 1 & 2 Vic. c. 77; Dan. Pr. 793; Roscoe on Evid. 164; Braithwaite's Pr. 385; Braithwaite's Oaths in Chan. 48; and notes to No. 9, *ante*.

(*i*) See last note; and notes to No. 12, *ante*.

(*k*) 3 & 4 Will. IV. c. 82, s. 1; Dan. Pr. 793; Roscoe on Evid. 165; Braithwaite's Pr. 385; Braithwaite's Oaths in Chan. 48; and notes to No. 9, *ante*.

33.
Declaration and affirmat thereto (*l*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare that the contents of this my affirmation are true.

A. B. { Affirmed and declared by the said A. B., pursuant to the Act 3rd & 4th William the IVth., chapter 82, at (*State where, and when, as in* No. 12, *ante*): before me (*&c.: ante*, No. 12).

34.
Affirmation under the Common Law Procedure Act 1854 (*m*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*Residence, and description or addition*), do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare as follows:

1.

2.

Affirmed (*&c.: see post*, No. 35).

35.
Declaration and affirmat thereto (*n*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that the contents of this my affirmation are true.

A. B. { Affirmed by the said A. B., at (*State where, and when, as in* No. 12, *ante*), pursuant to the Act 17th & 18th Victoria, chapter 125, before me: I having been first satisfied of the sincerity of the objection made by the said A. B. to be sworn, from conscientious motives.

(*Signature and style of office: see ante*, No. 12).

(*l*) See *ante*, No. 32, n. (*k*); and notes to No. 12, *ante*.

(*m*) 17 & 18 Vic. c. 125, s. 20; see Dan. Pr. 793; Braithwaite's Pr. 386; Braithwaite's Oaths in Chan. 49; and notes to No. 9, *ante*. For form of promise and declaration under The Evidence Further Amendment Act, 1869 (32 & 33 Vic. c. 68), s. 4 (amended by The Evidence Amendment Act, 1870: 33 & 34 Vic. c. 49), see *post*, Chap. XXII.

(*n*) See last note; and notes to No. 12, *ante*.

36.
Declaration under the Statutory Declaration Act (*o*).

I, A. B., of (*Place of residence, and description or addition*), do solemnly and sincerely declare that (*Set forth the matters declared to*). And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty William the IVth., intituled "An Act to repeal an Act (*p*) of the present session of Parliament (intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits'), and to make other provisions for the abolition of unnecessary oaths (*q*)."

37.
Declarat thereto.

To the declarant: Is that your name and handwriting ?
You do solemnly and sincerely declare that the contents of this your declaration are true.
Declared at (*State where*), this —— day of ——, 187—, } A. B.
before me,
C. D.
(*Add style of office.*)

---

3. *Affidavits and Affirmations, Generally.*

38.
Joint affidavit and affirmation (*r*).

In Chancery.
(*Title of cause or matter, and reference to the record.*)
I, A. B., of (*Residence, and description or addition*), make oath and say, and I, C. D., of (*Residence, &c.*), being one of the people called Quakers [*or as may be: see ante*, Nos. 27, 30, 32, 34], do solemnly, sincerely, and truly affirm and declare [*or as may be*]:
And first I, the said A. B., for myself, say as follows:
1.
2.
And I, the said C. D., for myself, say as follows:
3.
4.

[Sworn

(*o*) 5 & 6 Will. IV. c. 62, s. 18, and Sch. (Amended as to Victoria, 22 & 23 Vic. c. 12, s. 1); and see 31 & 32 Vic. c. 72, ss. 12—14. By the Stamp Act, 1870 (33 & 34 Vic. c. 97), s. 3, and Sched., a duty of 2*s.* 6*d.* is charged on every declaration under the 5 & 6 Will. IV. c. 62, with certain exemptions specified in the Schedule.

(*p*) 5 & 6 Will. IV. c. 8.

(*q*) By the National Debt Act, 1870 (33 & 34 Vic. c. 71), s. 18, and 2nd Sch. pt. 1, the 5 & 6 Will. IV. c. 62, may be cited as "The Statutory Declaration Act, 1835," in any declaration made thereunder for the purposes of that Act.

(*r*) See notes to Nos. 9, 11, *et seq.*

A. B.
C. D. } Sworn by the said A. B., and affirmed by the said C. D. (*&c.; see preceding Forms*), at (*State where, and when, as in* No. 12, *ante*):
before me (*&c.: ante*, No. 12).

39.

Foot note thereto (*s*).

This affidavit and affirmation is filed on the part and behalf of (*&c.: Continue as in* No. 10, *ante, to the end*).

40.

Persons before whom pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour, may be taken (*t*).

1. In London, or elsewhere, within ten miles of Lincoln's Inn Hall:
Before a Clerk of Records and Writs (*u*)—the Clerk of Inrolments in Chancery (*u*)—Or, "a London Commissioner to administer oaths in Chancery" (*x*).

2. In any place, in England or Wales, ten miles or more from Lincoln's Inn Hall:
Before "a Commissioner to administer oaths in Chancery in England" (*y*).

3. In the Isle of Man, or the Channel Islands:
Before "a Commissioner to administer oaths in Chancery for the Channel Islands" (*z*).

(*s*) See *ante*, No. 10, n. (*r*).

(*t*) See Dan. Pr. 646, 786. The Taxing Masters have power to administer oaths in respect of the taxation of costs: Ord. XL. 1; and see Prel. Ord. 10 (6); 5 & 6 Vic. c. 103, s. 7; Dan. Pr. chap. XXXI. s. 5; and the Chief Clerks of the Judges are empowered to administer oaths, take affidavits, and receive affirmations, for the purpose of any proceedings directed by the Judge to be taken before them: 15 & 16 Vic. c. 80, s. 30; Dan. Pr. chap. XXIX. s. 1. The Commissioner before whom an affidavit is sworn must not be a solicitor in the cause: Dan. Pr. 786. As to receiving and taking the affidavits and answers of prisoners, see Dan. Pr. 647. For the course of procedure to obtain the appointment of a Commissioner to administer oaths in Chancery, see Braithwaite's Oaths in Chan. 4—13. The following fees are payable to the person taking an oath, affirmation, declaration, or attestation upon honour:—before an officer of the Court, 1*s.* 6*d.*, payable in Chancery fee fund stamps, but nothing for marking exhibits; before a London Commissioner, 1*s.* 6*d.*, and 1*s.* for marking each exhibit; and before a Country Commissioner, 2*s.* 6*d.*, and 1*s.* for each exhibit: 16 & 17 Vic. c. 78, s. 2; Regul. to Ord. Sched. II. 4; Dan. Pr. 646, n. (*p*). A document annexed to an affidavit is regarded as part of the affidavit, and not, strictly, an exhibit: Braithwaite's Pr. 349. If a Commissioner attends elsewhere than at his own office to administer an oath, he is entitled to reasonable payment for his travelling expenses; but there is no fixed fee for his attendance: Dan. Pr. 647, n. (*f*). As to procuring the attendance of a Record and Writ Clerk on an invalid, see *post*, Chap. XXXI.

(*u*) 15 & 16 Vic. c. 87, s. 29; Prel. Ord. 10 (6); Ord. I. 39; Dan. Pr. 646, 786.

(*x*) 16 & 17 Vic. c. 78, s. 2; Dan. Pr. 646, 786.

(*y*) 16 & 17 Vic. c. 78, s. 1; Prel. Ord. 10 (6); Ord. IV.; Dan. Pr. 646, 786.

(*z*) 16 & 17 Vic. c. 78, ss. 3, 6; Dan. Pr. 646, 647, 786.

4. In Scotland:
Before "a Commissioner to administer oaths in Scotland for the High Court of Chancery in England" (*a*).

5. In Ireland:
Before "a Commissioner to administer oaths in Ireland for the High Court of Chancery in England" (*a*).

6. In Scotland, Ireland, the Channel Islands, the Isle of Man, or any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts (*b*):
Before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively (*c*).

7. In Foreign parts, out of Her Majesty's dominions:
Before any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or of legation, exercising his functions in any foreign country; or before any British consul-general, or consul, vice-consul, acting consul, pro-consul, or consular agent exercising his functions in any foreign place (*d*)—Or, as to affidavits and affirmations, before any notary public, or other person having authority to administer an oath in such place (*e*).

(*a*) Appointed under 6 & 7 Vic. c. 82, s. 1; Dan. Pr. 647, 786. Since the 16 & 17 Vic. c. 78, the Commissioners have been styled as above: see Braithwaite's Oaths in Chan. 12.

(*b*) For a list of such places in foreign parts, see *post*, No. 41.

(*c*) 15 & 16 Vic. c. 86, s. 22; 16 & 17 Vic. c. 78, s. 6; Dan. Pr. 646, 786. The Court will take judicial notice of the seal or signature of such Judge, &c.: *ib.*

(*d*) 6 Geo. IV. c. 87, s. 20; 15 & 16 Vic. c. 86, s. 22; 18 & 19 Vic. c. 42, ss. 1, 2; Dan. Pr. 647; Taylor on Evid. ss. 1406, 1406a. The seal and signature of such ambassador, &c., affixed, impressed, or subscribed on or to the answer, &c., is admissible in evidence, without proof of such seal and signature being the seal and signature of the person whose seal and signature the same purports to be, or of the official character of such person: 18 & 19 Vic. c. 42, s. 3; and see 15 & 16 Vic. c. 86, s. 22; Dan. Pr. 647; Taylor, ss. 9 a., 10.

(*e*) See Dan. Pr. 787. As to the proof required where an affidavit is sworn in foreign parts, out of Her Majesty's dominions, before any other person than one of the British functionaries above enumerated, see Dan. Pr. 787; Seton, 20; Braithwaite's Oaths in Chan. 21; and *post*, No. 42; and as to the course where there is a difficulty in taking an affidavit before a foreign authority, see Dan. Pr. 787, n. (*c*). As to taking pleas and answers in foreign parts by commission, in cases not within the 15 & 16 Vic. c. 86, s. 22, see Dan. Pr. 646, 647, 650—656; and *post*, Chap. XVII.

41. List of places under Her Majesty's dominion in foreign parts (*f*).

I. North Sea:

Heligoland.

II. Mediterranean Possessions:

1. Gibraltar.
2. Malta.

III. East Indies:

1. Bengal,
2. Madras, and } Presidencies.
3. Bombay.

IV. West Indies, and Mauritius:

1. Jamaica.
2. Honduras.
3. Turks and Caicos Islands.
4. British Guiana.
5. Trinidad.
6. Bahama Islands.
7. Barbadoes.
8. St. Vincent.
9. Grenada. } Windward Islands.
10. Tobago.
11. St. Lucia.
12. Antigua.
13. Montserrat.
14. St. Kitts (*Or*, St. Christopher's).
15. Nevis. } Leeward Islands.
16. Virgin Islands.
17. Dominica.
18. Mauritius.

V. Eastern Colonies:

1. Ceylon.
2. Singapore.
3. Hong Kong.
4. Labuan.
5. Falkland Islands.

VI. Australian Colonies:

1. New South Wales.
2. Queensland.
3. Victoria.
4. South Australia.
5. Western Australia.
6. Tasmania.
7. New Zealand.

(*f*) See Dan. Pr. 646; Warren's Law Studies, ed. 3, 1464, *et seq.*

VII. NORTH AMERICAN COLONIES:

1. Canada (*g*):
   (*a*) Ontario.
   (*b*) Quebec.
   (*c*) Nova Scotia.
   (*d*) New Brunswick.
2. Prince Edward's Island.
3. Newfoundland.
4. Vancouver Island.
5. British Columbia.
6. Bermuda.

VIII. AFRICAN POSSESSIONS, AND ST. HELENA:

1. Cape of Good Hope.
2. Natal.
3. British Kaffraria.
4. Sierra Leone.
5. Gambia.
6. Gold Coast.
7. Lagos.
8. St. Helena.

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42. Affidavit verifying signature of a foreign magistrate, &c., to an affidavit, where not judicially noticed (*h*).

Formal parts: see ante, No. 9.

1. I am well acquainted with the handwriting of A. B., of (*State address, as in jurat to affidavit, notarial act, or certificate, &c.: as thus:* Dijon, in France): having seen him write.

2. The signature "————" set and subscribed to the jurat [*or as may be*] at the foot of the paper writing marked A. now produced and shown to me, and purporting to be an affidavit sworn in this cause [*Or*, matter] by C. D. before the said A. B., is of the proper handwriting of the said A. B.

If so: and the seal affixed to or impressed on the said affidavit, near such signature, is the seal of office of the said A. B.

3. The said A. B. is a
(*Describe what, as in jurat to affidavit, notarial act, or certificate, &c.: as thus:* notary public, duly admitted as such, and practising at Dijon aforesaid):
and by the law and practice of (France) the said A. B. had, at the time the said affidavit was sworn before him, full power and authority to administer oaths and take affidavits; and affidavits taken before him in the manner aforesaid are received in the Courts of Judicature in (France), in all proceedings where affidavits are required or in use.

4. *Show means of knowledge.*

(*g*) See The British North America Act, 1867 (30 & 31 Vic. c. 3), ss. 3—7.

(*h*) See Dan. Pr. 787; and *ante*, No. 40, n. (*e*). For other modes of verification, see Dan. Pr. 787, n. (*e*).

43.

Memorandum of identity of exhibit(*i*).

In Chancery.

(*Short title of cause or matter* (*k*), *and reference to the record.*)

This is the paper [*Or*, parchment] writing, marked A., referred to in the affidavit [*Or*, affirmation] of A. B. (and C. D.), sworn [*Or*, affirmed] in this cause [*Or*, matter] before me (*If not by all the deponents or affirmants, add:* by the said A. B.), this —— day of —— 187—.

E. F.,
Chief Clerk, [*Or*, A Commissioner, *&c.* (*l*)].

44.

Consent to affidavit or affirmation being filed, notwithstanding omissions, or unauthenticated alterations(*m*).

We consent to this affidavit [*Or*, affirmation] being filed, notwithstanding (*Describe the defect; as thus:*

the omission of "John" before "Jones" among the defendants' names in the title thereof.

Or, the officer before whom the same has been sworn has not authenticated the interlineation of the words "as I know," between the 8th and 9th lines of page 2 thereof).

A. B., solicitor for the plaintiff [*Or*, defendant C. D. —*Or*, petitioner—*Or*, respondent—*or as may be*].
E. F., solicitor for the defendant G. H., *&c.*

45.

Notice of filing affidavit or affirmation(*n*).

Formal parts: see post, No. 54.

Take notice, that I have this day filed an affidavit [*Or*, affirmation] herein of A. B. [*Or*, an affidavit of each of the following persons, namely: A. B., C. D., and E. F., *&c.—or as may be*].

46.

Notice of intention to read an affidavit, affirmation, or deposition already filed (*o*).

Formal parts: see post, No. 54.

Take notice, that the plaintiff [*or as may be*] intends to read, on the hearing of

(*State what occasion; as:*

the petition presented by him in this cause [*Or*, matter] on the ——, 187—,

Or, the motion to be made in this cause [*Or*, matter], pursuant to the notice given on his behalf on the ——, 187—,

(*i*) As to exhibits to affidavits, see *ante*, No. 9, n. (*q*); Regul. 8 Aug. 1857, r. 12.

(*k*) Great care should be taken to insert the short title of the cause, or matter, in which the affidavit or affirmation is made.

(*l*) See *ante*, No. 12, n. (*a*).

(*m*) See *ante*, No. 9, nn. (*k*) (*l*); Dan. Pr. 790; Prel. Ord. 10 (6); Ord. I. 36; XVIII. 5. The consent should be indorsed on the affidavit or affirmation.

(*n*) Ord. XXXV. 38; Dan. Pr. 795; *ib.* Chap. XXIX. s. 3 (8); XXXV. s. 2.

(*o*) As to when this notice is necessary, see Dan. Pr. 794, 795; *ib.* Chap. XXXV. s. 2; Braithwaite's Pr. 346: and see Ord. XIX. 12; Ord. XXXV. 27; and *post*, Chap. XXII.

Or, the summons taken out in this cause [*Or*, matter] on his behalf on the ——, 187—,

(*or as may be*),

the affidavit [*Or*, affirmation—*Or*, deposition] of A. B., filed in this cause [*Or*, matter] on the ——, 187—.

---

47. Affidavit of service of a notice, or notice of motion (*p*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening—*Or*, two o'clock in the afternoon—*or as may be*—of that day (*q*), I served (*Describe the person or persons required to be served; as thus:*

A. B., the defendant—*Or*, A. B., one of the defendants—in this cause,

Or,

A. B., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this cause [*Or*, matter],

Or,

A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—, named,

Or,

A. B., of (*Residence and addition*),

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

(*or as may be*),

with a notice in writing intituled in this cause [*Or*, matter], addressed to the said (*State whom*), and purporting that (*Recite the body of the notice*): by delivering a true copy of the said notice to, and leaving the same with (*Describe the person or persons on whom, and where, service was effected; as thus:*

the said A. B., personally, at (*State where*), in the (county) of ——.

(*p*) As to service generally, and of a notice, or notice of motion, see Dan. Pr. 378—381; *ib.* Chap. XXXV. s. 2; Ord. III. 2—8; XXXIII. 2, 3; XXXVII. 2; XLII. 2; and as to the contents of affidavits of service, see Dan. Pr. 793.

(*q*) As to the hours for service, where personal service is not required, see Dan. Pr. 380; Ord. XXXVII. 2. The statement as to the hour introduced into this and the following forms seems material only where the service is not made until the last day allowed to effect it; it is advisable, however, to insert the statement in every case.

Or,

the said A. B., personally, at (*State where*), in the (county) of ——, and the said C. D., personally, at, *&c.*

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at (*State where*), in the (county) of ——; (2) the clerk of the said C. D., at the office of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*

48.

Affidavit of service of a decree or order (*r*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening—*Or*, two o'clock in the afternoon—*or as may be*—of that day (*s*), I served (*Describe the person or persons required to be served; as thus:*

A. B., the defendant—*Or*, A. B., one of the defendants—in this cause,

Or,

A. B., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this cause [*Or*, matter],

Or,

A. B., who is named in the order dated the —— day of ——, 187— (*order served*), hereinafter mentioned,

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order, dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

(*or as may be*),

with a decree [*Or*, an order] made in this cause [*Or*, matter] by the Lord High Chancellor [*or as may be*], dated the —— day of ——, 187—, and now produced and shown to me and marked A. (*t*),

(*r*) As to service of a decree or order, see Dan. Pr. 450; *ib.* Chap. XXVI. s. 7; and *ante*, No. 47, n. (*p*).

(*s*) See *ante*, No. 47, n. (*q*).

(*t*) Exhibit the order. For form of memorandum thereof, see *ante*, No. 43. Where the service is to be followed up by the issue of process of contempt, it appears to be considered necessary that the ordering parts should be set out in the affidavit of service: instead of exhibiting the order. The affidavit must also, in like case, show that the copy served was duly indorsed under Ord. XXIII. 10, as varied by Ord. 7 Jan. 1870, r. 1. For form of affidavit in such case, see *post*, Chap. XXVI.

Or, if not exhibited, say, after 187—: whereby it was (decreed and) ordered that—*and recite the declaratory and ordering parts,*

by delivering a true copy of the said decree [*Or*, order] to, and leaving the same with (*Describe the person or persons on whom, and where, service was effected; as thus:*

the said A. B., personally, at (*State where*), in the (county) of ——.

Or,

the said A. B., personally, at (*State where*), in the (county) of ——, and the said C. D., personally, at, *&c.*

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at (*State where*), in the (county) of ——; (2) the clerk of the said C. D., at the office of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*).

2. At the time of the aforesaid service thereof, I showed to the person [*Or*, to each of the persons] to whom such true copy of the said decree [*Or*, order] was delivered, as aforesaid, the said original decree [*Or*, order] duly passed and entered.

---

49. Affidavit of service of a petition (*u*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening—*Or*, two o'clock in the afternoon—*or as may be*—of that day (*x*), I served (*Describe the person or persons required to be served; as thus:*

A. B., the defendant—*Or*, A. B., one of the defendants—in this cause,

Or,

A. B., who by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this cause [*Or*, matter],

Or,

A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—, named,

Or,

A. B., who is named in the note at the foot of the petition hereinafter mentioned,

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one

(*u*) As to service of a petition, see Dan. Pr., Chap. XXXV. s. 3; Ord. XXXIV. 2; and *ante*, No. 47, n. (*p*).

(*x*) See *ante*, No. 47, n. (*q*).

of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order, dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

(*or as may be*),

with a petition preferred in this cause [*Or*, matter] by (*State whom; as thus:* the above-named plaintiffs), to the Lord High Chancellor [*Or*, to his lordship the Master of the Rolls], with his lordship's fiat or order thereon, dated the —— day of——, 187—, whereby all parties concerned were required to attend his lordship thereon on the then next day of petitions, and notice thereof was to be given forthwith [*or as may be*], and with the note at the foot of the said petition, and of which note a true copy is set forth in the schedule hereto: by delivering a true copy of the said petition, fiat or order, and foot note to, and leaving the same with (*Describe the person or persons on whom, and where, service was effected; as thus:*

the said A. B., personally, at (*State where*), in the (county) of ——,

Or,

the said A. B. personally, at (*State where*), in the (county) of ——, and the said C. D. personally, at, *&c.*,

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at (*State where*), in the (county) of ——; (2) the clerk of the said C. D., at the office of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*

2. At the time of the aforesaid service thereof, I showed the said original petition, with the said fiat or order thereon, and foot note thereto, to the person [*Or*, to each of the persons] to whom such true copy thereof was delivered by me as aforesaid.

The schedule above referred to.
(*Set out a copy of the foot note.*)

50.
Affidavit of service of an ordinary summons (*y*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening—*Or*, two o'clock in the afternoon—*or as may be*—of that day (*z*), I served (*Describe the person or persons required to be served; as thus:*

(*y*) See Regul. 8 Aug. 1857, Sched. No. 2. As to service of an ordinary summons, see Dan. Pr., Chap. XXIX. s. 1; Ord. XXXV. 7; and *ante*, No. 47, n. (*p*). For forms of affidavits of service of an administration summons, of a summons to originate any other proceeding, and of a Chief Clerk's summons, see *post*, Chap. XXIX.

(*z*) See *ante*, No. 47, n. (*q*).

A. B., the defendant—*Or*, A. B., one of the defendants—in this cause,

Or,

A. B., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this cause [*Or*, matter],

Or,

A. B., of (*Residence and addition*),

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who by an order dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

(*or as may be*),

with a summons in this cause [*Or*, matter], dated the —— day of ——, 187—, issued from, and under the seal of, the Chambers of the Master of the Rolls [*Or*, the Vice-Chancellor Sir Richard Malins—*or as may be*], and addressed to the said (*Describe whom*): by delivering to, and leaving with (*Describe the person or persons on whom, and where, service was effected; as thus:*

the said A. B., personally, at (*State where*), in the (county) of ——,

Or,

the said A. B., personally, at (*State where*), in the (county) of——, and the said C. D., personally, at, *&c.*,

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at (*State where*), in the (county) of —— ; (2) the clerk of the said C. D., at the office of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*)

a true copy of the said summons; and I at the same time showed the said summons to the person [*Or*, to each of the persons] to whom such true copy was delivered as aforesaid: by which summons all parties concerned were required to attend at the Chambers aforesaid, in the Rolls' Yard, Chancery Lane, Middlesex [*Or*, in Stone Buildings, Lincoln's Inn, Middlesex—*or as may be, as in summons*], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, on the hearing of an application on the part of (*State whom, as in summons*), for (*State the object of the application, as in summons*).

2. There was at the foot of the copy [*Or*, of each copy] of the said summons so served, and at the foot of the said summons when so produced, as aforesaid, a memorandum or statement that

such summons was taken out by ——, of ——, solicitor for —— (*Insert these particulars from the summons*).

Where the time for service has been enlarged, by adjournment, add: 3. The said copy [*Or*, Each of the said copies] of the said summons, when so served as aforesaid, and the said summons when so produced as aforesaid, had in the margin thereof a memorandum in the words and figures following; namely (*Set out, verbatim, the memorandum of adjournment*).

51. Affidavit of service of a notice, notice of motion, order, petition, or ordinary summons, on a substitute (*a*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening

Or, two o'clock in the afternoon—*or as may be*

of that day (*b*), I served (*Describe the person or persons required to be served, as in No.* 47, *ante*), with a (*Describe the notice or other document served, as in Nos.* 47—50, *ante*): by delivering to, and leaving with (*Name of substitute*), personally, at (*State where*), in the (county) of ——, a true copy of the said notice [*or as may be—see ante, Nos.* 47—50].

2. *State production of original order, petition, or summons, as in par.* 2 *of Nos.* 48—50, *ante—and of service of the note of enlargement of return of summons, as in par.* 3 *of No.* 50, *ante—when respectively applicable.*

3. The said (*substitute*) is the person of that name who is named in the order made in this cause [*Or*, matter] by the Lord High Chancellor [*or as may be*], dated the —— day of ——, 187—, whereby it was ordered that (*Set out directions as to the substituted service*); and at the time of the aforesaid service on the said (*substitute*), I also served him with the said order of the —— day of ——, 187—, by delivering to, and leaving with him a true copy of such order; and I at the same time produced and showed to him such original order, duly passed and entered.

52. Affidavit of having been served with a notice, notice of motion, summons, petition, or order (*c*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*Place of business*), gentleman, the solicitor

Or, I, A. B., of (*Residence*), clerk to C. D., of (*Place of business*), gentleman, the solicitor

in this cause [*Or*, matter] for the defendant E. F. [*or as may be*], make oath and say as follows:

1. On the —— day of ——, 187—, I, as such solicitor as aforesaid,

(*a*) As to substituted service, see Dan. Pr. *Index*, SERVICE.

(*b*) See *ante*, No. 47, n. (*q*).

(*c*) An affidavit of having been served with a notice of motion is not required, in practice: production of the notice served being deemed sufficient evidence of such service: see Ord. XL. 23; and Dan. Pr. 709.

Or, I, as such clerk as aforesaid—*or as may be* was duly served (*State where; as thus:* at my office,
Or, at the office of the said C. D.,
situate at, *&c.*, aforesaid) by (*State whom; as thus:* Mr. G. H.,
Or, a clerk of Mr. G. H.,
who acts as solicitor in this cause—*Or*, matter—for the plaintiff —*or as may be*), with the paper writing intituled in this cause [*Or*, matter], now produced and shown to me, and marked A. (*d*), and purporting to be (*Describe it shortly: as thus:*
a notice [*Or*, a copy of a summons] on behalf of the said plaintiff, *&c.*, addressed to (*State whom*).
Or, a copy of a petition preferred by the said plaintiff, *&c.*, and of the fiat or order thereon, and foot note thereto: in which note the name of the said (*State whom*) is included.
Or, a copy of an order made in this cause—*Or*, matter—dated the —— day of ——, 187—).
Sworn (*&c.: see ante*, No. 12).

(*d*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43. The document may either be exhibited, as in the above form, or its contents described as in Nos. 47—50, *ante*, without exhibiting it.

Section III.—Formal Parts of Motion Papers—Notices—Notices of Motion—Petitions—and Ordinary Summonses.

53.

Formal parts of indorsement of a motion paper (*e*).

In Chancery.

State before whom the motion is to be made; as thus:

Lord Chancellor—*Or*,
Lord Chancellor and Lords Justices—*Or*,
Lords Justices—*Or*,
Master of the Rolls—*Or*,
V.-C. Malins—*Or*,
V.-C. Bacon—*Or*,
V.-C. Wickens.

State short title of cause or matter, and reference to the record (f); as thus:

In Re Jones' Estate
Styles
v.
Brown.
(1870. J. 23 (*f*))
} Brief.

State name of Counsel to move, his fee, on whose behalf the motion is to be made, and its object; as thus:

Mr. A.
— Gūā. (*g*).

To move on behalf of the plaintiff [*Or*, defendant, A. B.—*Or*, of C. D., *&c.*] as within (*h*).

Or, that (*State shortly the object of the motion; and if any instructions are written in the fold, or inside the brief, add:* See within (*i*)).

(*k*)

(*Add name, &c., of solicitor, or party instructing: see ante*, No. 4, *or* 7.)

(*e*) See Dan. Pr. Chap. XXXV. s. 2. As to interlocutory and other applications by motion, generally, see *ib.* s. 1; and for the practice on motions, *ib.* s. 2; and see *post*, Chap. XXXV.

(*f*) As to the reference to the record, see *ante*, No. 1.

(*g*) Counsel's fee, on a motion purely of course, is half a guinea; and on an *ex parte* motion one guinea, or more, according to circumstances.

(*h*) For various forms of description of the special object of the motion, see *Index*, Motion Paper. For a list of applications which may be made by *ex parte* motion, and by motion of course, see Dan. Pr. Appendix I. A motion paper should ordinarily be prepared on a half-sheet of foolscap, and be folded lengthways.

(*i*) For convenience of statement, the forms of motion paper given in the ensuing pages usually assume that the entire instructions to counsel will be set forth in the indorsement; but such instructions, or part of them, may be written in the fold or inside of the brief, or on a separate paper, instead of being indorsed.

(*k*) If a print of the bill, an affidavit of service, or other document, is sent, it should be referred to here; as: "A print of the bill accompanies."

54.
Formal parts of a notice (*l*).

In Chancery.

(*Title of cause or matter* (*m*), *and reference to the record* (*n*).)

Take notice, that (*State the object of the notice* (*o*); *as thus:*

I have this day entered an appearance for the defendant A. B., to the plaintiff's bill).

Dated this —— day of ——, 187—.

(*Add name, &c., of solicitor or party giving the notice*; *as thus:*

C. D., of No. 800, Euston Road, Middlesex (Address for service, at the office of Mr. E. F., No. 200, Chancery Lane, Middlesex), Agent for G. H., of Bury, Lancashire, Solicitor for the defendant [*or as may be*].

Or,

C. D., of Blank Villa, Croydon, Surrey (Address for service at the office of Mr. E. F., No. 8, Paper Buildings, Temple), defendant in person [*or as may be*].

To (*Insert names of the solicitors or parties to whom the notice is given*; *as thus:*

Mr. L. M., solicitor [*Or*, agent] for the plaintiff [*Or*, for the defendant—*Or*, for the petitioner—*Or*, for the respondent N. O.—*Or*, for P. R., attending under an order dated the —— of ——, 187—.

Or, To

the plaintiff—*Or*, the defendant—*Or*, the petitioner—*Or*, the respondent N. O.—*Or*, P. R., attending, *&c.*)

55.
Formal parts of a notice of motion (*p*).

In Chancery.

(*q*).

(*Title of cause or matter, and reference to the record* (*r*).)

Take notice, that this Honourable Court will be moved before *State what Judge* (*s*); *as:*

the Lord High Chancellor,

(*l*) As to service of a notice, or notice of motion, see *ante*, No. 47, n. (*p*).

(*m*) For ordinary purposes, the short title: as "Jones *v.* Styles": is sufficient.

(*n*) As to the reference to the record, see *ante*, No. 1.

(*o*) For forms of notice in particular cases, see *Index*, NOTICE.

(*p*) As to the form of a notice of motion, see Dan. Pr. XXXV. s. 2; and as to the service, see *ante*, No. 47, n. (*p*); and see *post*, Chap. XXXV. s. 1.

(*q*) If the motion is not made in a cause, it must be marked with the name of the Lord Chancellor, and one of the Vice-Chancellors; or with the name of the Master of the Rolls: in the same manner as a bill is marked: Ord. VI. 6; Dan. Pr. Chap. XXIX. s. 2 (2); *ib.* XXXV. s. 1. For the mode of marking bills, see *post*, Chap. VI.

(*r*) As to the reference to the record, see *ante*, No. 1.

(*s*) See Ord. XXXIII. 1; Dan. Pr. Chap. XXXV. s. 2.

Or,

their lordships the Lords Justices,

Or,

his lordship the Master of the Rolls,

Or,

his honour the Vice-Chancellor Sir John Stuart,

Or,

his honour the Vice-Chancellor Sir Richard Malins,

Or,

his honour the Vice-Chancellor Sir James Bacon,

If the motion is to be heard elsewhere than in the Judge's usual Court at Westminster or Lincoln's Inn, state where; as:

at the residence of the said Lord Chancellor [*or as may be*], situate at (*State where*),

State on what day the motion is proposed to be made; as:

on Thursday, the —— day of ——, 187—,

If the motion is to be heard at a specially appointed hour, state so; as:

at eleven of the clock in the forenoon,

or so soon thereafter as counsel can be heard,

State by whom, or on whose behalf, the motion is to be made; as:

by Mr. A., as counsel on the part of the above named defendant C. D. (*t*),

Or,

by the above named defendant C. D., in person (*t*);

that

State the precise object of the motion (*u*); *as:*

the plaintiff's bill in this cause may stand dismissed out of this Court, with costs, for want of prosecution.

If special leave has been obtained to serve the notice (*e. g.*

(*t*) The christian and surnames, or title of honour, or corporate title, of the party on whose behalf the motion is to be made should be here stated; but if it appears by the notice that the application is made by the sole plaintiff, or all the plaintiffs, or by the sole defendant, or all the defendants, the names need not be set forth. The place of residence and description or addition of the applicant should be stated, if he is not shown to be a party to the suit or proceeding. Where the applicant is under disability, and the application is made by his next friend or guardian, the christian and surnames of the next friend or guardian should be stated; and if not made in a suit in which he is so acting, his place of residence and description or addition should be shown; as: "the plaintiff John Jones, an infant, by Thomas Styles his next friend" —Or, "the defendant Charles Jones, a person of unsound mind, not so found, by Thomas Styles his guardian"—Or, "Mary Jones, an infant, by Thomas Styles, of Esher, in the county of Surrey, gentleman, her next friend."

(*u*) For various forms of description of the special object of a notice of motion, see *Index*, NOTICE OF MOTION.

where the defendant has not appeared)—or to give the notice for a non-motion day: or for a motion day short of the ordinary two clear days after service: or for a special hour or place—state so; as:

And take also notice, that special leave to serve you with this notice

If so, add: and to give this notice for the day (and hour and place) aforesaid,

has been obtained from the said Lord Chancellor [*or as may be*].

Or,

And take also notice, that special leave to give this notice for the day (and hour and place) aforesaid has been obtained from the said Lord Chancellor [*or as may be*].

Dated this —— day of ——, 187—.

(*Add name, &c., of solicitor* (*y*) *or party giving the notice: see ante*, No. 54).

To (*Insert names of the solicitors or parties to whom the notice is given: see ante*, No. 54).

56.

Formal parts of a petition of course to the Lord Chancellor, or Master of the Rolls (*z*).

In Chancery.

(*a*).

(*Title of cause or matter* (*b*), *and reference to the record* (*c*).)

To the Right Honourable the Lord High Chancellor of Great Britain [*Or*, To the Right Honourable the Master of the Rolls].

The humble petition of the plaintiff [*or as may be* (*d*)].

Showeth as follows:

1. By, &c.
2. On, &c.

State the material facts on which the application is founded; and divide the statements into paragraphs, numbered consecutively (*e*).

(*y*) A notice of motion by a party suing or defending *in formâ pauperis* (except for the discharge of his solicitor,) must be signed by his solicitor: Ord. III. 1; VII. 11; Dan. Pr. Chap. XXXV. s. 2.

(*z*) As to interlocutory and other petitions, generally, see Dan. Pr. Chap. XXXV. s. 2; and for the practice on petitions, *ib.* s. 3; and see *post*, Chap. XXXV. s. 2. For a list of applications which may be made by petition of course to the Lord Chancellor and Master of the Rolls respectively, see Dan. Pr. Appendix II.

(*a*) If the petition is not presented in a cause, it must be marked with the Judge's name, as explained *ante*, No. 55, n. (*q*); Ord. VI. 6.

(*b*) For a collection of special titles of petitions, see *post*, Chap. XLV. s. 1.

(*c*) As to the reference to the record, see *ante*, No. 1.

(*d*) The petitioner should be described, in the manner explained, *ante*, No. 55, n. (*t*).

(*e*) See Dan. Pr. Chap. XXXV. s. 3. For forms of petition in particular cases, see *Index*, PETITION.

Your petitioner therefore humbly prays, that (*State the precise object of the petition*).

And your petitioner will ever pray, &c. (*f*).

57.

Formal parts of a special petition, to the Lord Chancellor, or Master of the Rolls (*g*).

Proceed as in No. 56, *ante, to the end of the stating part; and continue thus:*

Your petitioner therefore humbly prays, that (*State the precise object of the petition*).

Or that your lordship will please to make such other order in the premises as to your lordship shall seem meet.

And your petitioner will ever pray, &c.

58.

Foot note to a special petition (*h*).

If any person is intended to be served with the petition, add: It is intended to serve this petition on (*State the names of the persons intended to be served; as:* the defendant A. B.—*Or,* A. B., in the petition named).

But if no person is intended to be served, say: It is not intended to serve this petition on any person.

59.

Consent to a petition not otherwise of course (*i*).

I consent to the prayer of this petition.

A. B., solicitor for the plaintiff [*Or,* defendant—*or as may be*]

——, 187—.

(*f*) A petition by a party suing or defending *in formâ pauperis* (except for the discharge of his solicitor) must be signed by his solicitor: Ord. VII. 11; Dan. Pr. Chap. XXXV. s. 3.

(*g*) See notes to No. 56, *ante.*

(*h*) A statement to this effect is required to be made at the foot of every petition (not being a petition of course, or a petition of appeal and rehearing, or of rehearing) presented to the Lord Chancellor or Master of the Rolls, and of every copy thereof: Ord. XXXIV. 1; Dan. Pr. Chap. XXXV. s. 3; and see Ord. 19 Mar. 1869. As to the service of a petition, see Dan. Pr. Chap. XXXV. s. 3; Ord. XXXIV. 2; and *ante,* No. 47, n. (*p*); and as to petitions of appeal and rehearing, or of rehearing, see Dan. Pr. Chap. XXXII. s. 2; and *post,* Chap. XXXII. s. 2.

(*i*) For cases in which orders on petition at the Rolls will be drawn up on production of the written consent of the opposite party, without the attendance of counsel, see in Dan. Pr. Appendix II. The consent is usually written opposite the prayer of the petition.

60.
Formal parts of an ordinary summons (*k*).

In Chancery.

(*Title of cause or matter, and reference to the record* (*l*).)

Let all parties concerned attend at my Chambers (*State where; as:*

in the Rolls' Yard, Chancery Lane, Middlesex,

Or,

in Old Square, Lincoln's Inn, Middlesex,

Or,

at No. 3, Stone Buildings, Lincoln's Inn, Middlesex,

Or,

at No. 11, New Square, Lincoln's Inn, Middlesex,)

on ——, the —— day of ——, 187 —, at — o'clock in the — noon,

If a short return is granted, add: by special leave,

on the hearing of an application on the part of (*State on whose behalf the application is made* (*m*)), that (*State the precise object of the application* (*n*)). Dated this —— day of ——, 187—.

Romilly, Master of the Rolls.

Or,

John Stuart, Vice-Chancellor.

Or,

Richard Malins, Vice-Chancellor.

Or,

James Bacon, Vice-Chancellor.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for the applicant [*or as may be—see ante, No.* 4 *or* 7].

To (*Insert the names of the solicitors or persons to be served with the summons: see ante, No.* 54).

(*k*) See Dan. Pr. Chap. XXIX. s. 1; Ord. XXXV. 2, and Sched K. No. 1. For forms of summons to administer an estate, and to originate any other proceeding, and of a Chief Clerk's summons, see Ord Sched. K. Nos. 1, 2, 3; and *post,* Chap. XXIX. s. 1. For the practice as to preparing, issuing, and serving an ordinary summons, see Dan. Pr. Chap. XXIX. s. 1.

(*l*) As to the reference to the record, see *ante,* No. 1.

(*m*) The applicant should be described in the manner explained *ante,* No. 55, n. (*t*).

(*n*) For various forms of description of the special object of an ordinary summons, see *Index,* SUMMONS (ORDINARY).

67.

Motion paper, for costs of exceptions not set down in time (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B. [*Or*, plaintiff—*or as may be*] that the costs incurred by him in respect of the exceptions for scandal filed on the ——, 187—, to his answer [*Or*, bill —*Or*, to the affidavit of C. D., filed by the said A. B., *&c.*, on the ——, 187—,—*or as may be*] by the plaintiff [*Or*, defendant A. B. *&c.*], may be taxed, and be paid by the plaintiff [*Or*, said defendant, *&c.*]: the said exceptions not having been set down for hearing in due time.

68.

Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the above-named defendant A. B. [*Or*, plaintiff—*or as may be*].

Showeth as follows:

1. On the —— day of ——, 187—, the plaintiff [*Or*, defendant A. B.—*or as may be*] filed exceptions for scandal to your petitioner's answer to the plaintiff's bill [*Or*, to your petitioner's bill—*Or*, to the affidavit of C. D., filed by your petitioner on the ——, 187—, *or as may be*] in this cause [*Or*, matter]; but has not set down the same for hearing, and the time allowed so to do by the General Orders of this honourable Court has expired.

2. Your petitioner has incurred certain costs in respect of the said exceptions.

Your petitioner therefore humbly prays, that the said plaintiff [*Or*, defendant, &c.] may be ordered to pay to your petitioner such costs as have been incurred by him in respect of the said exceptions: such costs to be taxed by the Taxing Master.

And your petitioner will ever pray, &c.

69.

Memorandum that scandal has been expunged (*y*).

Scandal expunged, pursuant to order dated the — day of —— 187—.

X. Y.,
C. R. & W.

---

the day the exceptions are set down, be served on the party whose pleading, &c., is excepted to: Dan. Pr. 295. The notice of filing may be combined with the notice of setting down: see No. 63, *ante*.

(*x*) See Dan. Pr. 295; Ord. XVI. 20.

(*y*) As to the mode of expunging scandalous matter, see Dan. Pr. 296; Ord. XVI. 21. A memorandum in the above form is usually written opposite the expunged passages: Dan. Pr. 296. As to amending office copies, see Dan. Pr. 296.

70.
Motion paper, that documents may be taken off the file, by consent (*z*).

Formal parts: see ante, No. 53.

To move on behalf of all parties, that, by consent, the (*Describe the documents; as thus:* plaintiff's bill in this cause—the interrogatories filed by the plaintiff for the examination of the defendants A. B. and C. D. in answer thereto—the several answers of the said defendants to the said bill—and an affidavit of E. F., filed ——, 187—, and an affidavit of G. H., filed ——, 187—,) may be taken off the file of this Court.

71.
Notice of motion, to take affidavit off the file for scandal and impertinence (*a*).

Formal parts: see ante, No. 55.

on the part of (the plaintiff), that the affidavit of (the defendant A. B.), filed on the —— day of ——, 187—, may be taken off the file of this Court, as being scandalous and impertinent; and that (the defendant A. B.), on whose part and behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by the said affidavit, and the costs of this application.

72.
Summons, for leave to take affidavit off the file, and file another in like form with certain omissions (*b*).

Formal parts: see ante, No. 60.

on the part of the defendants H. C. and I. C., that the affidavit of T. A., filed on the —— day of ——, 187—, may be taken off the file of this Court; and that the applicants may be at liberty to file another affidavit of the said T. A., in the same words as his said affidavit, omitting the 14th, 15th, and 16th paragraphs thereof; and to read the said affidavit, when so filed, at the hearing of this cause; and that the costs of this application may be costs in the cause.

(*z*) See Dan. Pr. 685. For order for leave for plaintiff to take his bill off the file, without costs, see *Cocq* v. *Blakley*, V. C. W., 14 Dec. 1865, Reg. Lib. A. 2391 (by consent); and for defendant to take his answer off the file, and file another, see *post*, No. 634. As to taking documents off the file, see Dan. Pr. *Index*, FILE (TAKING OFF THE).

(*a*) For order in like case, see *Kernick* v. *Kernick*, V. C. W., 22 Jan. 1864, Reg. Lib. A. 187 : 12 W. R. 335, V. C. W.

(*b*) *Collins* v. *Catley*, V. C. W. (on adjournment from Chambers), 2 Mar. 1865, Reg. Lib. A. 472.

CHAPTER II.

SECURITY FOR COSTS (*a*).

SECTION I.—APPLICATION FOR SECURITY.

73. Motion paper, for security for the costs of a suit by bill or summons (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that the plaintiff give the usual security (*c*) to answer costs: he being described in his bill [*Or*, administration summons] as of (*State where*); and that, in the meantime (*d*), proceedings be stayed—*If there are other defendants, add:* as against the said defendant.

Copy bill [*Or*, summons] accompanies.

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74. Petition of course, for the like (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff has filed his bill in this cause against your petitioner [*Or*, The plaintiff has taken out an administration summons in this cause against your petitioner]: to which your petitioner has appeared.

2. The plaintiff by the said bill [*Or*, summons] styles himself as of (*State where*): such place being out of the jurisdiction of this honourable Court.

Your petitioner therefore humbly prays, that the plaintiff may be ordered to give the usual security to answer costs; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against your petitioner.

And your petitioner will ever pray, &c.

(*a*) For the cases in which security for costs can be required, and the practice connected therewith, see Dan. Pr. 28—37, 104—106, 300—302; Dan. Pr. INDEX, COSTS (SECURITY FOR).

(*b*) See Dan. Pr. 33. For order in like case, see Seton, 1269, No. I. As to when the order can be obtained on motion or petition of course, see Dan. Pr. 33.

(*c*) As to the amount, see Dan. Pr. 33, 301; Ord. XL. 6.

(*d*) See Dan. Pr. 36; Ord. XXXVII. 14.

(*e*) For order in like case, see *Burnett* v. *Nicol*, M. R., 22 Dec. 1869, Rolls' Lib.; and see notes to No. 73, *ante*. The copy served of the bill or summons should be left with the petition: see Dan. Pr. 33.

75. Notice of motion, or summons, for security for costs (*f*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B., that the plaintiff [*Or*, that C. D., the next friend (*g*) of the plaintiff] may be ordered, within (ten) days, to give the usual security to answer costs; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against the said defendant.

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76. Notice of motion, or summons, for security for costs of a proceeding by petition or ordinary summons (*h*).

Formal parts: see ante, No. 55, *or* 60.
on the part of (the defendant) A. B., who has been served with the petition preferred by [*Or*, with the summons taken out on behalf of] C. D. in this cause [*Or*, matter] on the ——, 187—, that the said C. D. [*Or*, that E. F., the next friend therein of the said C. D.] may be ordered to give the usual security to answer costs; and that the said petition [*Or*, summons] may stand over till such security is given.

---

77. Notice of motion, or summons, for security for costs to be given by a limited company (*i*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B., that, pursuant to section 69 of "The Companies Act, 1862," the plaintiffs, the —— Company, limited, may be ordered, within (ten) days, to give security for his costs of this suit; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against the said defendant.

---

78. Notice of motion, or summons, for (better) security to be given within a limited time (*j*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B.
Or, of A. B., in the order dated the —— day of ——, 187— (*Order directing the security to be given*) named,
that
If the bond of an insufficient person has been given, say: in lieu of, or in addition to, the bond of E. F., dated the ——, 187—,
the plaintiff [*Or*, C. D., in the said order named], may be ordered, within (fourteen) days, pursuant to the (said) order dated the ——,

(*f*) See Dan. Pr. 33, 104, 300, 301. As to when a special application by motion or summons for the order is necessary, see *ib.*

(*g*) As to when a next friend may be ordered to give security, see Dan. Pr. 28, 104, 106, 301, n. (*q*).

(*h*) See Dan. Pr. 33, n. (*r*).

(*i*) As to security for costs by a limited company, see Dan. Pr. 27, n. (*a*); 25 & 26 Vict. c. 89, s. 69. For order, on petition of course, for security for costs of a petition presented in a winding-up matter, see *Re Bohemian Glass Co., Limited*, M. R., 7 June, 1870, Rolls' Lib.

(*j*) See Dan. Pr. 35.

187—, to procure some sufficient person on his behalf to give security by bond in the penalty of £100 [*or as may be*], conditioned to answer costs; and that, in the meantime, proceedings be stayed—*If there are other defendants or respondents, add:* as against the said A. B.

And that in default of such security being given, the plaintiff's bill

Or, administration summons—*Or*, the summons—*Or*, petition—of the said C. D., in the said order mentioned,

may stand dismissed out of Court, without further order,

If there are other defendants or respondents, add: as against the said A. B.,

with costs to be paid by the said C. D., to the said A. B.

79.

Notice of motion, or summons, for a new security to be given, on death or bankruptcy of obligor (*k*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B.

Or, of A. B., in the order dated the —— of ——, 187— (*Order directing former security to be given*) named,

that the plaintiff

Or, that C. D., in the said order named,

may be ordered, within (fourteen) days, to procure some sufficient person on his behalf to give a new security to answer costs, in lieu of, or in addition to, the bond, dated the —— of ——, 187—, given pursuant to the (said) order, dated the —— day of ——, 187—, by E. F., who has since died [*Or*, become bankrupt—*or as may be*]; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against the said A. B.

Or, in the case of a petition or summons, say: and that the said petition—*Or*, summons—may stand over until such security is given.

80.

Affidavit in support (*k*).

Formal parts: see ante, No. 9.

1. E. F., the obligor in the bond dated the —— of ——, 187—, which was given as security for costs, pursuant to the order in this cause [*Or*, matter], dated the —— of ——, 187—, has since died [*Or*, has since been adjudicated a bankrupt].

2. The plaintiff [*Or*, A. B.], the person required by the said order to give security for costs, is still permanently resident at ——, out of the jurisdiction of this honourable Court [*or as may be*].

3. *Show means of knowledge.*

(*k*) See Dan. Pr. 34.

Section II.—Giving Security.

81. Bond as security for costs (*l*).

Know all Men by these presents, that I, A. B., of (*Place of residence, and addition*), am held and firmly bound

Or, if two obligors, say: that we, A. B., of, *&c.*, and C. D., of, *&c.*, are jointly and severally held and firmly bound

to E. F. (*Insert name of Record and Writ Clerk to whose division the cause or matter is attached* (*m*)), esquire, one of the Clerks of Records and Writs of Her Majesty's High Court of Chancery, in the penal sum of one hundred pounds [*or other sum mentioned in the order*], of good and lawful money of Great Britain, to be paid to the said E. F., his certain attorney, executors, administrators, or assigns: For which payment to be well and faithfully made I bind myself, and my

Or, we bind ourselves, and each of us, our and each of our

heirs, executors, and administrators, firmly by these presents, sealed with my seal

Or, with our seals.

Dated this —— day of ——, 187—.

Whereas by an order of the High Court of Chancery, dated the —— day of ——. 187—, and made by his lordship, the Master of the Rolls [*or as may be*], in a cause wherein B. A. is plaintiff [*Or*, B. A. and another—*Or*, others—are plaintiffs], and D. C. is defendant [*Or*, D. C. and another—*Or*, others—are defendants —*Or*, in a matter intituled, *&c.*], on the application of (the defendant) G. H., It was ordered that (*Recite the mandatory part of the order directing the security to be given*): And whereas the above bounden A. B. hath,

Or, the above bounden A. B. and C. D. have,

at the request of the said (*Person required to give security*), agreed to enter into the above written obligation, subject to the condition hereinafter contained:

(*l*) See Dan. Pr. 33. The bond should be written on paper, and must bear the like Inland Revenue stamp as a common money bond for a similar amount: being 2*s.* 6*d.*, where the sum does not exceed £100, and 1*s.* 3*d.* for each additional £50 up to £300, and 2*s.* 6*d.* for every £100, or fractional part of £100, beyond: see the Stamp Act, 1870 (33 & 34 Vict. c. 97), Sched., Mortgage, Bond, &c.; and see Dan. Pr. 33. Before being left with the Record and Writ Clerk, the bond should be indorsed with the short title of the cause or matter, the words "Bond for security for costs," and the name, &c., of the solicitor leaving it: Dan. Pr. 33, n. (*b*).

(*m*) See Ord. I. 38.

Now the condition of the above written obligation is such, that if the above bounden A. B., his

Or, if the above bounden A. B. and C. D., or either of them, their or either of their

heirs, executors, or administrators, do and shall well and truly pay or cause to be paid, to

If the bond is given to all the defendants, say: all the defendants in the said cause—*If to less than all, or to respondents* (*n*), *name the particular defendants or respondents.*

all such costs as the said Court shall think fit to award to the said defendants, or to any of them [*or as may be*], in the said cause [*Or*, matter—*or as may be*]: then the above written obligation is to be void; or else to remain in full force and virtue (*o*).

A. B. (Seal).
(C. D. (Seal)).

Signed, sealed, and delivered by the above bounden A. B. (and C. D.), in the presence of,

B. A., of (*Residence and addition*).

82.
Other forms of recital and condition (*p*).

Obligation—as in No. 81, *ante.*

Whereas B. A. hath lately exhibited his bill of complaint in Her Majesty's High Court of Chancery against D. C. (and F. E.) defendant [*Or*, defendants], touching the matters therein contained:

Now the condition of the above written obligation is such, that if the above bounden A. B. and C. D., or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid—*If the bond is given to all the defendants, say:* to the defendants in the said cause—*If to one, or to less than the whole, name the particular defendant or defendants*—all such costs as the said Court shall think fit to award to the said—*If the bond is given to one, add:* defendant—*If to all or several of the defendants, add:* defendants, or to any or either of them—in the said cause, then the above written obligation is to be void; or else to remain in full force and virtue.

(*Signatures and attestation as in last Form.*)

(*n*) As to the expediency of extending the bond to all the defendants or respondents, see Dan. Pr. 34.

(*o*) The above forms of recital and condition will suit almost every case in which a bond for costs can be ordered to be given; and are suggested as substitutes for Form No. 82, which has long been in ordinary use, but only applies, in terms, to a bill suit.

(*p*) See Braithwaite's Pr. 531.

83. Notice of deposit of bond (*q*).

Formal parts: see ante, No. 54.

Take notice, that I have this day deposited with the Clerk of Records and Writs the bond of A. B., of (*Residence and addition as in bond—If so*, and C. D., of, *&c.*), conditioned to answer costs, pursuant to the order dated the —— of ——, 187— (*Order directing bond to be given*).

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84. Notice of name of proposed obligor (*r*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*Or*, E. F., in the order dated the —— of ——, 187—, named] proposes A. B., of (*Residence and addition—If so*, and C. D., of, *&c.*), as a sufficient person [*Or*, sufficient persons] on his behalf to give security, by bond, for costs, pursuant to the said order dated the —— of —— 187—.

---

85. Notice of objection to (proposed) obligor (*r*).

Formal parts: see ante, No. 54.

Take notice, that A. B. in the bond [*Or*, notice] of the —— of ——, 187—, named, as surety for costs, is objected to by me, on the ground that he is not a sufficient person to give such security, in conformity with the order dated the —— of ——, 187—.

---

86. Affidavit of (proposed) obligor, in justification (*r*).

Formal parts: see ante, No. 9.

1. I am the obligor named in the bond dated the —— of ——, 187—

Or, if bond not yet given, say: I am the person proposed by the plaintiff [*or as may be*] to give security on his behalf by bond

to the Record and Writ Clerk, in the penalty of £100 [*or as may be*] conditioned to answer costs in this cause [*Or*, matter], pursuant to the order dated the ——, 187—.

2. I am well and truly worth the sum of £—— (*double the amount of security directed*), of lawful money of Great Britain, over and above what is sufficient to pay all my just debts.

---

87. Notice of motion, or summons, for leave to pay security fund into Court, in lieu of bond (*s*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff

Or, of A. B., in the order dated the —— of ——, 187—(*Order directing security to be given*) named,

that in lieu of the usual security directed to be given by the (said) order dated the —— of —— 187—, he may be at liberty, within

(*q*) See Dan. Pr. 33, 35.

(*r*) See Dan. Pr. 35.

(*s*) Dan. Pr. 34. For the mode of paying money into court, see Dan. Pr., Chap. XL. s. 2; and see *post*, Chap. XL.

(ten) days, to pay £120 [*or as may be*] into the bank, to the credit of, (*Short title of suit, and reference to record—Or, Short title of matter*), to an account to be entitled "Security for costs," to answer costs, in case any costs shall be awarded to be paid by him—*Add, if desired:* and that the said sum may be laid out in bank 3 per cent. annuities.

Or, in reduced annuities—*Or,* in new 3 per cent. annuities, on the like credit and account; and the interest thereof invested and accumulated.

---

88. Notice of motion, or summons, to discharge order for security (*t*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that notwithstanding the order dated the —— of ——, 187—, directing security for costs to be given by him, he may be at liberty to amend his bill, by inserting his present residence: he being now resident at (*State where*), within the jurisdiction of this honourable Court; and that thereupon the said order may be discharged.

(*t*) *Mathews* v. *Chichester,* M. R. 25 July, 1861, Reg. Lib. B. 1797: 30 Beav. 135; and see Dan. Pr. 37. At law, where security has been given under an order, by a plaintiff out of the jurisdiction, the security is not vacated by the return to the jurisdiction: see *Skeene* v. *Davies,* 14 W. R. 776, Q. B.

Section III.—Enforcing Security.

89.

Notice of motion, or summons, for leave to put in suit a bond for costs (*u*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B.,

Or, of A. B., in the order dated the —— of ——, 187— (*Order directing bond to be given*), named,

that he may be at liberty to put in suit the bond dated the ——, 187—, given pursuant to the (said) order dated the —— of ——, 187—, by C. D. to E. F., esquire, the Clerk of Records and Writs, conditioned to answer costs; and, for that purpose, that the said bond may be delivered by the proper officer to the said A. B.; and that the said A. B. may be at liberty to make use of the name of the said E. F., on first giving him a proper indemnity: such indemnity to be settled by the Judge, in case the parties differ.

90.

Receipt for the bond, and undertaking to indemnify the obligee (*x*).

In Chancery.

(*Short title, and reference to the record.*)

Received the —— of ——, 187—, pursuant to the (foregoing) order dated the —— of ——, 187—, (*Order to deliver out bond*), of E. F., esquire, the Clerk of Records and Writs, the bond as security for costs therein mentioned.

And we hereby undertake to save harmless and indemnify the said E. F. against the costs of, or relating to, any proceedings which may be taken in his name against C. D., the obligor in the said bond, to recover the costs thereby conditioned to be paid; and which costs have been taxed by the Taxing Master at the sum of £—— [*or as may be*].

A. B., of (*Signature, residence and addition, of the person on whose behalf the order for delivery out of the bond has been obtained*).

G. H., of (*Place of business*), solicitor for the said A. B.

Witness to the signatures of the said A. B., and G. H.,

F. A., of (*Residence and addition*).

(*u*) See Dan. Pr. 36. For order in like case, see Braithwaite's Pr. 535. For the general course of procedure in the Petty Bag Office, see Dan. Pr. Chap. XXXIX. s. 7; and *post*, Chap. XXXIX. s. 3.

(*x*) See Dan. Pr. 36; Braithwaite's Pr. 536. On delivering out the bond, the Record and Writ Clerk requires a copy of the order directing such delivery to be left with him; and also a receipt and undertaking as above: which are usually written at the foot of the copy of the order: Dan. Pr. 36.

91. Summons, for payment of costs out of security fund (*y*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B.:

Or, of A. B., in the order dated the —— of ——, 187—, (*Order for payment into Court*) named:

If fund invested in stock, say: that so much of the £—— bank 3 per cent. annuities [*or as may be*], remaining on the credit of this cause [*Or*, matter], "Security for costs" (*as in certificate of fund*), as will raise £—— cash, the costs (*If so:* certified by the Taxing Master's certificate dated the —— of ——, 187—, and) by the order dated the —— day of ——, 187—, directed to be paid to the applicant, together with the applicant's costs of this application: to be ascertained by the Chief Clerk: may be sold; and that the money to arise by such sale may be paid to Mr. G. H., the applicant's solicitor.

Or if fund in cash, say: that out of the £——, cash in the bank on the credit of (*&c., as above*), £——, the costs (*&c., as above to* Chief Clerk), may be paid to Mr. G. H., the applicant's solicitor.

(*y*) See Dan. Pr. 36.

CHAPTER III.

PAUPERS (*a*).

92. Petition of course, for leave to prosecute a suit *in formâ pauperis* (*b*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. *In a suit by bill:* Your petitioner, on the —— of ——, 187—, filed his bill in this cause, against the above named defendant: thereby stating that (*Set forth, succinctly, the plaintiff's right to the matters in question, as it appears in the bill; as thus:*

A. B. lately died intestate; that your petitioner claims to be one of his next of kin, and, as such, to be entitled to a distributive share of his personal estate; and that the defendant is his legal personal representative);

and praying that (*State the substance of the prayer; as thus:*

the usual accounts of the personal estate of the said A. B. may be taken; and that such estate may be administered under the direction of this honourable Court).

1. *In a suit by administration summons:* On the —— of ——, 187—, a summons was taken out in this cause on behalf of your petitioner, as claiming to be one of the next of kin [*or as may be*] of the above named A. B., against the above named defendant, as his administrator, for an order for the administration of the personal estate of the said A. B. [*or as may be*]; and a duplicate of the said summons has been duly filed at the Record and Writ Clerks' office.

2. *State, shortly, the subsequent proceedings; as thus:* The defendant has appeared to the said bill [*Or*, summons]; but no further proceeding in the said cause has been had.

3. Your petitioner is not worth five pounds: his wearing apparel and the subject matter of this suit only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute this suit *in formâ pauperis;* and that C. D., esquire, who has subscribed this petition: thereby certifying your peti-

(*a*) As to when a person may sue or defend *in formâ pauperis*, and the mode of admission, see Dan. Pr. 37—45, 140—142; *ib. Index*, PAUPER; Ord. VII. 8—11; Ord. XL. 5.; Regul. to Ord. IV. 2, 3.

(*b*) See Dan. Pr. 41. For order in like case, see Seton, 1271, No. 6. The petition should be accompanied by an authentic copy of the bill or summons.

tioner's just cause of suit: may be assigned as his counsel, and Mr. E. F. for his solicitor.

And your petitioner will ever pray, &c.

93.

Certificate of counsel, subscribed to petition (*c*).

I humbly conceive that this case is proper for relief in this Court.

(*Signature of counsel.*)

——, 187—.

94.

Affidavit in support (*d*).

In Chancery.

(*Title, and reference to the record.*)

I, A. B., of, *&c.*, the above named plaintiff, make oath and say, that I am not worth the sum of five pounds: my wearing apparel and the subject matter of this suit only excepted.

Sworn (*&c.: ante*, No. 12).

95.

Motion paper, for leave to prosecute a claim *in formâ pauperis* (*e*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., of (*residence and addition*): who claims to be (*State what; as thus:* a creditor upon the estate of C. D., the testator in this cause): that he may be at liberty to prosecute his claim in this cause [*or as may be*] *in formâ pauperis;* and that E. F., esquire, may be assigned as his counsel, and Mr. G. H. for his solicitor, on such claim.

96.

Motion paper, for leave to appeal *in formâ pauperis* (*f*).

Formal parts: see ante, No. 53.

To move on behalf of (the plaintiff) A. B., that his petition of appeal to the Lord Chancellor against the decree [*Or*, order] of the Master of the Rolls [*Or*, Vice-Chancellor ——], dated the —— of ——, 187—, may be set down without the usual deposit; and that he may prosecute the same *in formâ pauperis*; and that C. D., esquire, may be assigned as his counsel, and Mr. E. F. for his solicitor, on such petition.

(*c*) See Dan. Pr. 40; Ord. VII. 8.

(*d*) See Dan. Pr. 41.

(*e*) See Dan. Pr. 39; *ib.* Chaps. XXIX. s. 3 (8); XLV. s. 3. For order in like case, see Seton, 1271, No. 8. The order can only be obtained on *ex parte* motion: Dan. Pr. 39, n. (*q*).

(*f*) See Dan. Pr. 40; *ib.* Chap. XXXII. s. 2. For order in like case, see Seton, 1271, No. 7; and for affidavit of poverty, see *ante*, No. 94. The order can only be made by the Lord Chancellor, or Lords Justices: Seton, 1271. As to counsel's certificate in this case, see Dan. Pr. 40.

97.
Motion paper, for leave for a married woman to sue *in formâ pauperis*, without a next friend (*g*).

Formal parts: see ante, No. 53.

To move on behalf of (the plaintiff) A. B., the wife of (the defendant) C. B., that she may be at liberty to prosecute this suit,

Or, if the suit is not instituted, say: to institute a suit against E. F. and others, for (*State object; as thus:* the administration of the personal estate of G. H.), and prosecute the same, *in formâ pauperis*, without a next friend; and that D. C., esquire, may be assigned as her counsel, and Mr. F. E. for her solicitor.

98.
Affidavit in support (*h*).

Formal parts: see ante, No. 9.

1. I am advised, and verily believe, that I have a proper case for relief in this honourable Court in respect of (*State object of proposed suit*).

2. The draft of the bill proposed to be filed by me to obtain such relief has been settled and signed by D. C., esquire, barrister at law; and he has consented to act as my counsel in this suit; and Mr. F. E. has consented to act as my solicitor therein.

3. *Show inability to obtain a next friend; as thus:* I have applied to many of my friends and acquaintance, and made great exertions, to induce some substantial person among them to act as my next friend in such suit; but I cannot prevail upon any person to consent to act as such next friend.

4. I am not worth the sum of five pounds: my wearing apparel and the subject matter of the said proposed suit excepted.

5. I am desirous to file the said bill, and prosecute the said suit, *in formâ pauperis*, without a next friend.

99.
Petition of course, for leave to defend *in formâ pauperis* (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the above named defendant C. D. Showeth as follows:

1. *In a suit by bill:* The plaintiff has filed his bill in this cause against your petitioner—*If so:* who has appeared thereto (*k*).

2. *In a suit by administration summons:* An administration summons in this cause has been taken out on behalf of the above

(*g*) See Dan. Pr. 38, 105, 170, n. (*m*). The application can only be made by *ex parte* motion: Dan. Pr. 40, n. (*c*).

(*h*) See Dan. Pr. 38. The application must be accompanied by counsel's certificate of merits: *ante*, No. 93. If the bill has been filed, the statements must be varied accordingly.

(*i*) For order in like case, in a bill suit, see *D'Alteyrac* v. *Long*, M. R., 18 Mar. 1870, Rolls' Lib.; and see Dan. Pr. 140—142, 461. The petition need not be accompanied by a certificate of counsel: Dan. Pr. 142.

(*k*) The defendant need not enter an appearance before applying for the order: Dan. Pr. 142, n. (*l*), 461.

named plaintiff, against your petitioner—*If so:* who has appeared thereto (*l*).

3. Your petitioner is not worth five pounds: his wearing apparel and the subject matter of this suit only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to defend this suit *in formâ pauperis;* and that B. C., esquire, may be assigned as his counsel, and Mr. D. E. for his solicitor.

And your petitioner will ever pray, &c.

100.

Affidavit in support (*m*).

The same as No. 94, *ante*, but substituting "defendant" for "plaintiff."

101.

Notice of motion, to discharge, for irregularity, order to sue or defend *in formâ pauperis* (*n*).

Formal parts: see ante, No. 55.

on the part of (the defendant) A. B., that the order dated the ——, 187—, made by his lordship the Master of the Rolls [*or as may be*], on the application of (the plaintiff), whereby it was ordered that (the plaintiff) should be at liberty to prosecute this suit [*or as may be*] *in formâ pauperis*, may be discharged.

(*l*) See last note.

(*m*) See Dan. Pr. 142.

(*n*) See Dan. Pr. 41. For the grounds on which a party will be dispaupered, see Dan. Pr. 41, 43, 44.

CHAPTER IV.

NEXT FRIENDS.—GUARDIANS AD LITEM.

Section I.—Of Infants (*a*).

1. *Next Friends.*

102. Notice of motion, or summons, for removal of a next friend, and approval of another (*b*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the infant plaintiff, by A. B., of (*residence and addition*), his next friend for the purpose of this application (*c*), that C. D., the plaintiff's next friend in this suit, may be removed; and that the said A. B., or some other proper person, may be approved as, and deemed to be such next friend, in lieu of the said C. D.; and that

If before decree, add: the plaintiff's bill may be amended by inserting the name of the said A. B., or other person, as the plaintiff's next friend, instead of the name of the said C. D.

Or, if after decree, add: the said A. B., or other person, may be named in all future proceedings in this suit, as the plaintiff's next friend, in lieu of the said C. D.

(*a*) As to suits by or against infants, see Dan. Pr. 65—80, 145—158. For forms relating to inquiries into the propriety of infants' suits, and staying proceedings therein, see *post*, Chap. XIX.

(*b*) For order in like case, see *Morgan* v. *Morgan*, V. C. S. at Chambers, 16 Dec. 1869, Reg. Lib. B. 3145; and on security for costs being given by the substitute, see *Chapman* v. *Collins*, V. C. B. at Chambers, 18 July, 1870, Reg. Lib. A. 2083; and see Dan. Pr. 73. The application must be supported by an affidavit of the grounds for the removal of the next friend, and of the fitness to act of the proposed substitute; and the consent of the latter to act must be shown. For form of consent, see *post*, Chap. XLIV. As to the grounds on which a next friend will be removed, see Dan. Pr. 73, 74.

(*c*) See Dan. Pr. 69, 76, n. (*a*).

103.

Summons, to substitute a next friend for one desirous to retire (*d*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff, by A. B., his next friend, that he may be at liberty

If before decree, add: to amend his bill, by inserting the name of C. D., of (*residence and addition*), as his next friend, in lieu of the said A. B., who is desirous to retire.

Or, if after decree, add: to name C. D., of (*residence and addition*), as his next friend, in all future proceedings in this suit, in lieu of the said A. B., who is desirous to retire.

104.

Motion paper, to appoint a next friend for one deceased (*e*).

Formal parts: see ante, No. 53.

To move on behalf of the infant plaintiff, by A. B., of (*residence and addition*), his next friend for the purpose of this application (*f*), that he may be at liberty

If before decree, add: to amend his bill, by inserting the name of the said A. B. as his next friend, in lieu of C. D., now deceased.

Or, if after decree, add: to name the said A. B., as his next friend, in all future proceedings in this suit, in lieu of C. D., now deceased.

An affidavit in support accompanies.

105.

Petition of course, for the like (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the infant plaintiff, by A. B., of (*residence and addition*), his next friend for the purpose of this application (*f*).

Showeth as follows:

If before decree, say: 1. Your petitioner, by C. D., his next

(*d*) See. Dan. Pr. 74, 75. For order in like case, see Seton, 1252, No. 6. The application should be supported by an affidavit of the circumstances, and fitness of the proposed substitute: see Dan. Pr. 75; and his consent to act must be shown: *ib.* 76. For form of consent, see *post*, Chap. XLIV. As to the terms on which an infant's next friend will be allowed to retire, see Dan. Pr. 74, 75.

(*e*) See Dan. Pr. 75. For order in like case, on motion, see Seton, 1252, No. 5; and on petition of course, see *Barrow* v. *Hyslop*, M. R. 4 Dec. 1869, Rolls' Lib.; and on *ex parte* summons, see *Symons* v. *Symons*, V. C. M. at Chambers, 17 March, 1870, Reg. Lib. B. 709. As to the needful proceedings on the death, incapacity, or removal of an infant's next friend, see Dan. Pr. 75, 76. For form of consent of new next friend to act, see *post*, Chap. XLIV. As to when an order to change solicitors must be obtained, before the application can be made, see Dan. Pr. 75.

(*f*) See Dan. Pr. 69, 76, n. (*a*).

friend, filed his bill in this cause against the defendants—*State the subsequent stages of the suit; as thus:*

to which they appeared, and put in their answers; and replication thereto has been filed [*Or*, and this cause has been set down for hearing on motion for decree];

but no decree has yet been made.

Or, if after decree, say: 1. Your petitioner, by C. D., his next friend, filed his bill in this cause against the defendants; and a decree was made therein on the —— of ——, 187—, whereby certain accounts and inquiries were directed to be taken and made; but the Chief Clerk has not yet made his certificate of the result thereof [*or as may be*].

2. The said C. D. died on the ——, 187—, and your petitioner is desirous that the said A. B. may be approved as his next friend, in lieu of the said C. D.

Your petitioner therefore humbly prays, that he may be at liberty (*Continue as in* No. 104, *ante, to the end*).

And your petitioner will ever pray, &c.

106.

Notice of motion, or summons, to appoint a next friend for one incapacitated or removed (*g*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the infant plaintiff, by A. B., of (*residence and addition*), his next friend for the purpose of this application, that he may be at liberty

If before decree, add: to amend his bill by inserting the name of the said A. B. as his next friend, in lieu of C. D., who is incapacitated from acting [*Or*, who by an order dated the —— of ——, 187—, has been removed].

Or, if after decree, add: to name the said A. B. as his next friend, in all future proceedings in this suit, in lieu of C. D., who is incapacitated (*&c., as above*).

107.

Notice of motion, by defendant, that a new next friend may be approved for plaintiff (*h*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that a proper person may be approved as next friend of the plaintiff, in lieu of C. D., who has died [*Or*, become incapable of acting—*Or*, been removed]; and that

If before decree, add: the plaintiff's bill may be amended by inserting the name of such person as the plaintiff's next friend, in lieu of the said C. D.

Or, if after decree, add: such person may be named as the plaintiff's next friend, in all future proceedings in this suit, in lieu of the said C. D.

(*g*) See Dan. Pr. 76. For order in like case, see Seton, 1252, No. 6; and for consent to act, see *post*, Chap. XLIV.

(*h*) See Dan. Pr. 76.

2. *Guardians ad litem.*

108.

Motion paper, by defendant, for a guardian to be assigned him (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., an infant, by C. D., of (*residence and addition*), his next friend, that the said C. D. may be assigned his guardian, by whom he may defend this suit.

An affidavit of fitness accompanies.

109.

Petition of course, for the like (*k*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., an infant by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff has filed his bill in this suit against your petitioner: who has appeared thereto (*l*).

2. The said C. D. has no interest in this suit adverse to your petitioner; and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this suit.

And your petitioner will ever pray, &c.

110.

Affidavit in support of motion or petition (*m*).

In Chancery.

(*Title, and reference to the record.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this suit for the defendant A. B., make oath and say, as follows:

1. The defendant A. B. is under the age of twenty-one years; and he has been served with a copy of the plaintiff's bill in this suit, and has appeared thereto (*l*).

2. I know and am well acquainted with C. D., of (*residence and addition, as in motion paper or petition*), the person proposed to be assigned the guardian of the said A. B., by whom he may defend this suit.

3. The said C. D. is (*State degree of relationship to, or connection with the family of, the infant; as thus:* the maternal uncle of the

(*i*) See Dan. Pr. 146. For order in like case, on motion, see Seton, 1250, No. 1; and for form of guardian's consent to act, see *post*, Chap. XLIV. For the practice as to the appointment and removal of guardians *ad litem*, and supplying vacancies, see Dan. Pr. 145—158.

(*k*) For order in like case, see *Best* v. *Standeven*, M. R. 13 Dec. 1869, Rolls' Lib.

(*l*) As to appearance, see Dan. Pr. 146.

(*m*) See Dan. Pr. 146. The solicitor must swear that the proposed guardian has no adverse interest; but where he is unable to depose to all or some of the other facts, another deponent can be joined, and the affidavit varied accordingly.

said A. B.), and has no interest in the matters in question in this suit adverse to the interest therein of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be assigned such guardian as aforesaid.

4. *Show means of knowledge.*

Sworn (*&c.: ante*, No. 12).

111.

Motion paper, by defendant, for a guardian to be assigned him, in lieu of one deceased (*n*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., an infant, by C. D., of (*residence and addition*), his next friend, that the said C. D. may be assigned his guardian, by whom he may defend this suit, in lieu of G. H., now deceased.

An affidavit in support accompanies.

112.

Petition of course, for the like (*n*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., an infant, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff filed his bill in this suit against your petitioner: who appeared thereto; and by an order dated the —— of ——, 187—, G. H. was assigned his guardian *ad litem*.

2. The said G. H. died on the —— of ——, 187—.

3. The said C. D. has no interest in the subject matter of this suit adverse to your petitioner, and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this suit, in lieu of the said G. H.

And your petitioner will ever pray, &c.

113.

Affidavit in support of motion or petition (*o*).

In Chancery.

(*Title, and reference to the record.*)

I, E. F., of (*&c., as in ante*, No. 110):

1. G. H., who, by an order dated the —— of ——, 187—, was assigned the guardian *ad litem* of the defendant A. B. in this suit, died on the —— of ——, 187—; and no person has since been assigned such guardian.

2. The said A. B. is still under the age of twenty-one years.

3. I know and am well acquainted (*&c.; Continue as in para.* 2 *of* No. 110, *ante, to the end of that Form*).

(*n*) See Dan. Pr. 146, 148. For form of consent to act, see *post*, Chap. XLIV.

(*o*) See *ante*, No. 110, n. (*m*).

114.

Motion paper, for a guardian to be assigned an infant, as respondent to a petition (*p*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., an infant, by C. D., of (*residence and addition*), his next friend: who has been served with a copy of the petition, preferred on the —— of ——, 187—, by D. A. and others in this cause [*Or*, matter] to the Lord Chancellor [*Or*, Master of the Rolls]: that the said C. D. may be assigned his guardian, by whom he may appear upon the said petition.

The copy of the petition, and an affidavit in support of the motion, accompany.

115.

Petition of course, for the like (*q*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., an infant, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. Your petitioner has been served with a copy of the petition preferred on the —— of ——, 187—, by D. A. and others in this cause [*Or*, matter] to the Lord High Chancellor [*Or*, to your lordship].

2. The said C. D. has no interest in the matters in the said petition referred to, adverse to that of your petitioner; and is a proper person to be assigned his guardian on the said petition.

Your petitioner therefore humbly prays, that the said C. D. may be assigned the guardian of your petitioner, by whom he may appear upon the said petition.

And your petitioner will ever pray, &c.

116.

Affidavit in support of motion or petition (*r*).

In Chancery.

(*Title, and reference to the record, if any.*)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for A. B.. make oath and say, as follows:

1. The said A. B. has been served with a copy of the petition preferred on the —— of ——, 187—, by D. A. and others in this cause [*Or*, matter] to the Lord High Chancellor [*Or*, Master of the Rolls].

2. The said A. B. is under the age of twenty-one years.

3. I know and am well acquainted with C. D., of (*residence and addition*), the person proposed to be assigned the guardian of the said A. B., by whom he may appear upon the said petition.

(*p*) See Dan. Pr. 146, n. (*s*); *ib.* Chap. XXXV. s. 3. For order in like case, see *Re Herne Bay, &c., Act,* M. R., 26 April, 1865, Reg. Lib. A. 812; and see Seton, 1250, No. 2. For form of consent to act, see *post,* Chap. XLIV.

(*q*) See last note. The copy of the petition served should accompany the petition of course.

(*r*) See *ante,* No. 110, n. (*m*).

4. The said C. D. is (*State degree of relationship to, or connection with the family of, the infant, as:* the paternal uncle of the said A. B.); and has no interest in the matters in the said petition referred to, adverse to the interest of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be assigned such guardian as aforesaid.

5. *Show means of knowledge.*

Sworn (*&c.: ante*, No. 12).

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117. Notice of motion, or summons, for removal of a guardian, and appointment of another (*s*).

Formal parts: see ante, No. 55, *or* 60.

on the part of (the defendant) A. B., an infant, by C. D., of (*residence and addition*), his next friend for the purpose of this application (*t*), that E. F., the guardian *ad litem* of the said A. B., assigned by an order dated the —— of ——, 187—, may be removed; and that the said C. D., or some other proper person, may be assigned such guardian in lieu of the said E. F.

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118. Notice of motion, by plaintiff, that a guardian may be assigned a defendant (*u*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that Mr. John James Johnson, one of the solicitors of this honourable Court, or some other proper person (*v*), may be assigned the guardian of the defendant A. B., an infant, by whom he may (appear to and) defend this suit.

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119. Affidavit in support, where no appearance has been entered by the defendant (*w*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served the defendant A. B. with a printed copy of the plaintiff's (*If so:* amended) bill in this suit, with an indorsement on such copy in the form prescribed by the Statute and Consolidated General Order of this Court in that behalf, by delivering such printed copy, indorsed as aforesaid, to, and leaving the same with (*State whom, and where; as:*

the said defendant personally, at the dwelling-house of C. D., situate at ——, in the (county) of ——).

(*s*) See Dan. Pr. 148. For form of consent to act, see *post*, Chap. XLIV.

(*t*) See Dan. Pr. 69, 76, n. (*a*).

(*u*) See Dan. Pr. 147, 400, 421. For order in like case, see *Speight* v. *Walton*, V. C. S. at Chambers, 24 April, 1870, Reg. Lib. B. 1054; and see Seton, 1251, No. 4. Six clear days' notice of the application is necessary: Ord. VII. 3; XXXIII. 3. For the practice as to the appointment of a guardian *ad litem* at the instance of the plaintiff, see Dan. Pr. 147, 399, 400, 421; Ord. VII. 3; X. 5, 8; XL. 4.

(*v*) Mr. Johnson, the present solicitor to the Suitors' Fund, is the person usually appointed: Dan. Pr. 147. For order assigning another person as guardian, on plaintiff's motion, after appearance, see *Durrant* v. *Durrant*, V. C. W., 29 Jan. 1864, Reg. Lib. A. 176.

(*w*) See Dan. Pr. 147, 400.

2. The said printed copy bill, at the time of the aforesaid service thereof, appeared to me to have been duly stamped with the stamp of the Record and Writ Clerks' Office; and purported to be a copy of the bill of complaint in this suit, filed in the said office on the —— day of ——, 187—.

If an amended bill is served, add: as amended on the —— day of ——, 187—, pursuant to an order dated the —— day of ——, 187—.

3. The said defendant A. B. has not attained the age of twenty-one years.

4. On the —— day of ——, 187—, I served C. D., of (*residence and addition*): who is the person with whom, or under whose care, the said defendant A. B. was at the time of serving him as aforesaid with the said copy of the bill:

If C. D. is the father or guardian of the infant, add: and who is the father [*Or*, guardian] of the said A. B.:

Or, if not, add: and on the —— day of —— 187—, I also served E. F., of (*residence and addition*): who is the father [*Or*, guardian] of the said A. B.:

with a notice in writing intituled in this cause, and purporting that this honourable Court would (*&c., Recite the notice*), by delivering a true copy of the said notice to, and leaving the same with, the said C. D., personally, at (*State where*).

Or, with the wife—*Or*, son—*Or*, daughter—*Or*, servant—of the said C. D., at his dwelling-house, situate at (*State where*).

If so: and by delivering another true copy of the said notice to, and leaving the same with, the said E. F., personally (*&c., as above*).

5. *Show means of knowledge.*

120.

Affidavit in support, where an appearance has been entered by the defendant (*w*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served Mr. G. H., of (*Place of business*), the person by whom, as solicitor for the defendant A. B., an appearance for the said A. B. to the plaintiff's bill [*Or*, amended bill] in this cause has been entered, with a notice in writing intituled in this cause, addressed to (*State whom*), and purporting that this honourable Court would (*&c., Recite the notice*), by delivering a true copy of the said notice to, and leaving the same with, the said G. H., personally, at (*State where*).

Or, with the clerk—*Or*, servant—of the said G. H., at his office, situate at (*State where*).

2. The said A. B. has not attained the age of twenty-one years.

(*w*) See Dan. Pr. 147, 400.

Section II.—Of Idiots, Lunatics, and Persons of Unsound or Weak Mind (*x*).

1. *Next Friends.*

121. Notice of motion, or summons, for removal of a next friend, and approval of another (*y*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, a person of unsound mind not so found, by A. B., of (*residence and addition*), his next friend for the purpose of this application (*z*), that C. D., the plaintiff's next friend in this suit, may be removed; and that (*Continue as in* No. 102, *ante, to the end*).

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2. *Guardians ad litem.*

122. Motion paper, by a defendant found to be of unsound mind, for a guardian to be assigned him, where his committee is adversely interested (*a*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., a person of unsound mind so found, by C. D., of (*residence and addition*), his next friend, that the said C. D. may be assigned his guardian by whom he may defend this suit: his committee, the defendant E. F., having an adverse interest.

An affidavit in support accompanies.

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123. Petition of course, for the like (*a*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., a person of unsound mind so found, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff has filed his bill in this suit against your petitioner: who has appeared thereto (*b*).

2. Your petitioner has, by proceedings in lunacy, been found to

(*x*) As to suits by or against idiots, &c., see Dan. Pr. 80—83, 158—162; and as to obtaining the consent of the Court in lunacy to the institution of a suit, see Dan. Pr. 82. As to the summary jurisdiction in lunacy over the property of an alleged insane person, of small amount, see Dan. Pr. 83, n. (*b*).

(*y*) See Dan. Pr. 82, n. (*t*). For form of consent of next friend to act, see *post*, Chap. XLIV. The practice as to the removal and appointment of next friends of idiots, lunatics, and persons of weak mind, is the same, *mutatis mutandis*, as the practice in the case of infants: Dan. Pr. 82, n. (*t*); and such of the forms in Section I. as are not included in this section can be readily adapted.

(*z*) See Dan. Pr. 69, 76, n. (*a*).

(*a*) See Dan. Pr. 159, 656. For order in like case, on motion, see Seton, 1251, No. 3; and for form of consent to act, see *post*, Chap. XLIV. As to the appointment of guardians *ad litem* to persons of unsound or weak mind, see Dan. Pr. 158—162, 656.

(*b*) As to appearance, see Dan. Pr. 160.

be a person of unsound mind; and the defendant E. F. has been appointed and is now the committee of your petitioner's estate.

3. The said E. F. has an interest in the matters in question in this suit, adverse to the interest of your petitioner.

4. The said C. D. has no interest in this suit adverse to your petitioner; and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this suit.

And your petitioner will ever pray, &c.

124.

Affidavit in support of motion or petition (*c*).

In Chancery.

(*Title, and reference to the record.*)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the defendant A. B., make oath and say, as follows:

1. The defendant A. B. has been served with a copy of the plaintiff's bill in this suit, and has appeared thereto (*d*).

2. The said A. B. has, by proceedings in lunacy, been found to be a person of unsound mind; and the defendant E. F. has been appointed and is now the committee of his estate.

3. The said E. F. has an interest in the matters in question in this suit, adverse to the interest of the defendant A. B.

4. I know and am (*Continue as in* No. 110, *para.* 2, *ante, to the end of that Form*).

125.

Motion paper, by a defendant of unsound mind not so found, for a guardian to be assigned him (*e*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend, that the said C. D. may be assigned his guardian, by whom he may defend this suit.

An affidavit in support accompanies.

126.

Petition of course, for the like (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff has filed (*Continue as in* No. 109, *ante, to the end*).

(*c*) See Dan. Pr. 159. The solicitor must swear that the proposed guardian has no adverse interest; but where he is unable to depose to all or some of the other facts, another deponent can be joined, and the affidavit varied accordingly.

(*d*) As to appearance, see Dan. Pr. 160.

(*e*) See Dan. Pr. 159, 656. For order in like case, on motion, see Seton, 1250, No. 1; and on petition, see *Simmons* v. *Simmons*, M. R., 12 July, 1870,

127. Affidavit in support of motion or petition (*f*).

In Chancery.

(*Title, and reference to the record.*)

We, E. F., of (*Place of business*), gentleman, the solicitor in this cause for the defendant A. B., and B. E., of (*State place of residence, and add qualification to practise as a medical man; as thus:*

a Fellow of the Royal College of Physicians of London—*Or*,

a Member of the Royal College of Surgeons of London—*Or*,

a Licentiate of the Apothecaries' Company—*or as may be*),

severally make oath and say:

And first I the said E. F. for myself say, as follows:

1. The said A. B. has been served with a copy of the plaintiff's bill in this suit; and has appeared thereto.

2. 3. I know and am (*Continue as in* No. 110, *para.* 2, *ante, to the end of para.* 3).

4. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

5. *Show means of knowledge.*

And I the said B. E. for myself say, as follows:

6. I have been in actual practice as a physician [*or as may be*] for —— years last past; and I have for —— years last past professionally attended the above named A. B. [*or as may be*].

7. I personally examined the said A. B. on the —— day of ——, 187—, at (*State where*), and on several previous occasions [*or as may be*], for the purpose of ascertaining his state of mind.

8. From such my examination of the said A. B., I am decidedly of opinion that he is of unsound mind, and wholly incapable of the management of himself or his affairs, or of the care of his property [*or as may be*]; and I have formed such opinion from (*State the grounds*).

Sworn (*&c.: ante*, No. 12).

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128. Motion paper, by defendant, for a guardian to be assigned him, in lieu of one deceased (*g*).

Formal parts: see ante, No. 53.

To move (*Continue as in* No. 125, *ante, to the end; and add:* in lieu of B. D., now deceased).

An affidavit in support accompanies.

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129. Petition of course, for the like (*g*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff filed (*Continue as in* No. 112, *ante, to the end*).

Rolls' Lib.; and for order assigning a guardian *ad litem* to a person incapable, from paralysis, of putting in an answer, see *Mac Henry* v. *Davies*, M. R. 25 March, 1868, Rolls' Lib. For form of consent to act, see *post*, Chap. XLIV.

(*f*) See Dan. Pr. 159; and *ante*, No. 124, n. (*c*).

(*g*) See Dan. Pr. 160, 656. For form of consent to act, see *post*, Chap. XLIV.

130.
Affidavit in support of motion or petition (*h*).

In Chancery.

(*Title, and reference to the record.*)

We, E. F., of (*Describe the deponents, as in* No. 127, *ante*), severally make oath and say:

And first I the said E. F. for myself say, as follows:

1. G. H., who, by an order in this cause dated the —— of ——, 187—, was assigned the guardian *ad litem* of the defendant A. B., died on the —— of ——, 187—, and no person has since been assigned such guardian.

2. 3. I know and am (*Continue as in* No. 110, *para.* 2, *ante, to the end of para.* 3).

4. The said A. B. has not (*Continue as in* No. 127, *para.* 4, *ante, to the end of that Form*).

Sworn (*&c.: ante*, No. 12).

131.
Motion paper, for a guardian to be assigned a person of unsound mind not so found, as respondent to a petition (*i*).

Formal parts: *see ante*, No. 53.

To move on behalf of A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend: who has been served with the petition preferred on the —— of ——, 187—, by D. A. and others in this cause [*Or*, matter] to the Lord Chancellor [*Or*, Master of the Rolls]: that the said C. D. may be assigned the guardian of the said A. B., by whom he may appear upon the said petition.

An affidavit in support accompanies.

132.
Petition of course, for the like (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. Your petitioner has been served with (*Continue as in* No. 115, *ante, to the end*).

133.
Affidavit in support of motion or petition (*k*).

In Chancery.

(*Title, and reference to the record, if any.*)

We, E. F., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for A. B. hereinafter named, and B. E., of (*residence and description of a medical man: see* No. 127, *ante*), severally make oath and say:

And first I the said E. F. for myself say, as follows:

1. The said A. B. has been served with a copy of the petition preferred on the —— instant [*Or*, last], by D. A. and others in

(*h*) See Dan. Pr. 160; and *ante*, No. 124, n. (*c*).

(*i*) See Dan. Pr. 159; *ib.* Chap. XXXV. s. 3. For form of consent to act, see post, Chap. XLIV.

(*k*) See Dan. Pr. Chap. XXXV. s. 3.

this cause [*Or*, matter], to the Lord High Chancellor [*Or*, Master of the Rolls].

2. 3. I know and am (*Continue as in* No. 116, *para.* 3, *ante, to the end of para.* 4).

4. The said A. B. has not (*Continue as in* No. 127, *para.* 4, *ante, to the end of that Form*).

Sworn (*&c.: ante*, No. 12).

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134. Notice of motion, by plaintiff, that a guardian may be assigned a defendant (*l*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that Mr. John James Johnson (*m*), one of the solicitors of this honourable Court, or some other proper person, may be assigned the guardian of the defendant A. B., a person of unsound mind not so found, by whom he may (appear to and) defend this suit.

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135. Affidavit in support, where no appearance has been entered by the defendant (*n*).

In Chancery.

(*Title, and reference to the record.*)

We, E. F., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiff [*or as may be*], and B. E., of (*residence and description of a medical man: see* No. 127, *ante*), severally make oath and say:

And first I the said E. F. for myself say, as follows:

1. On the (*Prove service of copy bill, as in* No. 119, *para.* 1, *ante*).

2. On the —— day of ——, 187—, I served C. D., of (*residence and addition*): who is the person with whom, or under whose care, the said defendant A. B. was at the time of serving him as aforesaid with the said copy of the bill: with a notice in writing intituled in this cause, and purporting that this Honourable Court would (*&c., Recite the notice*), by delivering a true copy of the said notice to, and leaving the same with, the said C. D., personally, at (*State where*).

Or, with the wife—*Or*, son—*Or*, daughter—*Or*, servant—of the said C. D., at his dwelling-house situate at (*State where*).

3. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

4. *Show what applications have been made to the defendant's relations to undertake his defence.*

5. *Show means of knowledge.*

And I the said B. E. for myself say, as follows:

(*l*) See Dan. Pr. 160, 399, 400. For orders in like case, see *Saltzbacher* v. *Solomon*, M. R., 25 June, 1863, Reg. Lib. B. 1310; Seton, 1251, No. 4. Six clear days' notice of the application is necessary; Ord. VII. 3; XXXIII. 3. For the practice as to the appointment of a guardian *ad litem* at the instance of the plaintiff, see Dan. Pr. 160, 161, 399, 400, 421; Ord. VII. 3; X. 5, 8; XL. 4. As to appointing guardians to pauper prisoners of unsound mind, see Dan. Pr. 427; 11 G. IV. & 1 W. IV. c. 36, s. 15, r. 9.

(*m*) See *ante*, No. 118, n. (*v*).

(*n*) See n. (*l*), *sup.*

6. I have been in actual practice as a physician [*or as may be*] for —— years last past.

7. *Show that the defendant is of unsound mind, and the deponent's means of knowledge—see* No. 127, *para.* 7, 8, *ante.*

Sworn (*&c.: ante*, No. 12).

136.

Affidavit in support, where an appearance has been entered by the defendant (*o*).

Commence as in No. 135, *ante, and continue to:* And first I the said E. F. for myself say, as follows:

1. On the (*Prove service of notice of motion, as in* No. 120, *para.* 1, *ante*).

2. The said A. B. has not (*Continue as in* No. 135, *para.* 3, *ante, to the end of that Form*).

137.

Notice of motion, by plaintiff or defendant, to discharge order assigning guardian (*p*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that the order dated the —— of ——, 187—, whereby it was ordered that (*Recite so much of it as assigns a guardian*), may be discharged.

(*o*) See *ante*, No. 134, n. (*l*).

(*p*) See Dan. Pr. 161. For the grounds on which the order may be discharged, see *ib.*

Section III.—Of Married Women (*q*).

1. *Next Friends.*

138.
Notice of motion, or summons, by a married woman plaintiff to substitute a next friend (*r*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff A. B., by C. D., of (*residence and addition*), her next friend for the purpose of this application, that she may be at liberty

If before decree, add: to amend her bill, by inserting the name of the said C. D. as her next friend, in lieu of E. F., her present next friend.

Or, if after decree, add: to name the said C. D. as her next friend, in all future proceedings in this suit, in lieu of E. F., her present next friend.

139.
Order, on application by an adult married woman co-plaintiff, to change her next friend, after decree (*s*).

Title—Upon the application of the plaintiff A. S. F., by C. T. her next friend for this purpose, and upon hearing the solicitors for the applicant, and for the (other) plaintiffs, and for the defendants, and upon reading the decree dated, *&c.*, and an affidavit of the said A. S. F., filed, *&c.*, It is ordered that upon C. T., of, *&c.*, giving security, to be approved of by the Judge, to answer the defendants' costs to this time, and their costs (if any) to be hereafter awarded, the plaintiff A. S. F. be at liberty to name the said C. T. as her next friend in this cause, in the room of (the said) S. G., her present next friend: with liberty for the said S. G. to make such application as he may be advised as to the payment of the plaintiffs' costs of this cause to this time.

140.
Summons, on marriage of a female plaintiff, the next friend of the infant co-

Formal parts: see ante, No. 60.
on the part of the plaintiff L. K., now L. H., the wife of W. H., of (*residence and addition*), and of the infant plaintiff E. C. M., by J. C., of (*residence and addition*), their next friend for the purpose of this application, that the plaintiffs may be at liberty to name

(*q*) As to suits by or against married women, see Dan. Pr. 84, 85, 102, 108, 162—171; and as to staying suits instituted on their behalf without their consent, see *post*, Chap. XIX.

(*r*) See Dan. Pr. 105. For order in like case, see *Dixon* v. *Bagshawe*, M. R. at Chambers, 14 Dec. 1865, Reg. Lib. A. 2379. For forms of application to supply a vacancy occasioned by the death, incapacity, or removal of the next friend, see *ante*, Nos. 104, *et seq.*: which can be readily adapted to the case of a married woman. For form of consent of next friend to act, see *post*, Chap. XLIV.

(*s*) *Percy* v. *Percy*, M. R. at Chambers, 9 Dec. 1863, Reg. Lib. B. 2680; Dan. Pr. 105.

plaintiff, to appoint a next friend of both plaintiffs (*t*).

the said J. C. as the next friend of the said plaintiff E. C. M., in the place of the said plaintiff L. K., now L. H., her present next friend, and also as the next friend of the said plaintiff L. K., now L. H.

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2. *Guardians ad litem.*

141.
Motion paper, by infant wife, for a guardian to be assigned her (*u*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., the wife of (the defendant) C. B., by the said C. B. [*Or*, by E. F., of (*residence and addition*)], her next friend, that the said C. B. [*Or*, E. F.] may be assigned her guardian, by whom she may defend this suit: she being under age.

142.
Petition of course, for the like (*u*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B., wife of (the defendant) C. B., and an infant under the age of twenty-one years, by the said C. B. [*Or*, by E. F. of (*residence and addition*)], her next friend.

Showeth as follows:

1. The plaintiff has filed (*Continue as in* No. 109, *para.* 1, *ante, to the end of that Form*).

143.
Affidavit in support of motion or petition (*x*).

In Chancery.

(*Title and reference to the record.*)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the defendant A. B., make oath and say, as follows:

1. The defendant A. B. is the wife of the defendant C. B. [*Or*, of C. B., of, *&c.*]; and she has been served with a copy of the plaintiff's bill in this suit, and has appeared thereto.

2. The said A. B. is under the age of twenty-one years.

3. 4. 5. I know and am (*Continue as in* No. 110, *para.* 2, *ante, to the end of that Form*).

Sworn (*&c.: ante*, No. 12).

(*t*) For order in like case, see *Hudson* v. *Austen*, V. C. K. at Chambers, 2 Feb. 1864, Reg. Lib. A. 212.

(*u*) See Dan. Pr. 166, 421, 656, 657. As to the form of order, see Seton, 1250, No. 1. For form of consent to act, see *post*, Chap. XLIV.

(*x*) Dan. Pr. 166; and see *ante*, No. 110, n. (*m*).

CHAPTER V.

PETITION OF RIGHT (*a*).

144.
Formal parts of a petition of right (*b*).

In Chancery.
(*Name of Judge.*)
(*Set out the title of the intended suit.*)
To the Queen's Most Excellent Majesty:
The humble petition of A. B., of ——, by his attorney C. D., of —— (*State the christian and surnames, and usual places of abode, of the suppliant, and of his attorney, if any, by whom the petition is presented*).
Showeth as follows:
1. The, *&c.* } (*Set forth, with convenient certainty, the facts*
2. On, *&c.* } *entitling the suppliant to relief.*)
Your suppliant therefore humbly prays that, *&c.*

Dated the —— day of ——, 187—.
A. B.
[*Or*, C. D., counsel [*Or*, attorney] for the above-named suppliant A. B.]

145.
Indorsement on copy petition for service on the Solicitor to the Treasury (*c*).

In Chancery.
(*Short title.*)
Petition of Right
of A. B.
The suppliant prays for a plea or answer on behalf of Her Majesty, within twenty-eight days after the date hereof; or, otherwise, that the petition may be taken as confessed. Dated the —— day of ——, 187—.
C. D., of (*address*),
[Agent for E. F., of (*address*),]
the suppliant's solicitor.

(*a*) As to Petitions of Right, see Dan. Pr. 121—123; 23 & 24 Vic. c. 34; Ord. 1 Feb. 1862.

(*b*) See Dan. Pr. 122; 23 & 24 Vic. c. 34, s. 1, and Sched. No. 1. As to suing and defending a petition of right *in formâ pauperis*, see Ord. 1 Feb. 1862, rr. 5, 6; and *ante*, Chap. III.; and as to security for costs, see 23 & 24 Vic. c. 34, s. 7; and *ante*, Chap. II.

(*c*) See Dan. Pr. 122; 23 & 24 Vic. c. 34, ss. 3—5, 8, and Sched. No. 2; Ord. 1 Feb. 1862, r. 3.

146.
Indorsement, for service on other parties (*d*).

In Chancery.

(*Short title.*)
Petition of Right
of A. B.

To E. F.

You are hereby required to appear to the within petition, in Her Majesty's High Court of Chancery, within eight days, and to plead or answer thereto within fourteen days, after the date hereof.

Take notice, that if you fail to appear or plead or answer in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated (*&c., Conclude as in* No. 145, *ante*).

147.
Interrogatories for the examination of a respondent (*e*).

In Chancery.

(*Full title.*)
Interrogatories for the examination of the above named C. D. and E. F., in answer to the Petition of Right of the above named A. B.

1. Does not, *&c.*
2. What are, *&c.*
3. Set forth, *&c.*

The above named C. D. is required to answer all these interrogatories.

The above named E. F. is required to answer the interrogatories numbered 1 and 2.

(*Name of counsel.*)

148.
Præcipe for appearance (*f*).

In Chancery.

A. B. suppliant,
v.
The Queen. } Petition of Right.

E. F., of (*address*), appears in person [*Or*, G. H., of (*address*), attorney for E. F., appears for him].

Entered the —— day of ——, 187—.

149.
Summons for time to plead, answer, or demur (*g*).

Formal parts: see ante, No. 60.

on the part of the above named C. D. [*or as may be*], that he may have (one month's) further time to plead, answer, or demur, to the petition of right of the above named A. B.; and that the costs of this application may be costs in the cause.

(*d*) See *ante*, No. 145, n. (*c*)

(*e*) See Dan. Pr. 122; 23 & 24 Vic. c. 34, s. 6; Ord. 1 Feb. 1862, rr. 4, 7; and see Cons. Ord., Sched. B., *post*, No. 359.

(*f*) See Dan. Pr. 123; 23 & 24 Vic. c. 34, s. 5, and Sched. No. 4.

(*g*) See Dan. Pr. 123; 23 & 24 Vic. c. 34, ss. 4, 5.

150.
Demurrer of the Attorney-General, for want of jurisdiction and equity (*h*).

In Chancery.

(*Full title.*)

The demurrer of Sir R. B., knight, Her Majesty's Attorney-General, on behalf of her Majesty, to the Petition of Right of J. M. H., *&c.*

The Attorney-General, on behalf of Her Majesty, demurs to the said petition of right; and for cause of demurrer saith: that this honourable Court hath no jurisdiction touching the matters contained in the said petition, or any of them; and further, that the said petition doth not state any case that entitles the said petitioners to any relief in this honourable Court.

Wherefore, and for divers other good causes of demurrer appearing in the said petition, the Attorney-General, on behalf of Her Majesty, demands the judgment of this honourable Court whether he shall make any further answer to the said petition.

R. A. B.
Counsel for the Attorney-General.

151.
Formal answer of the Attorney-General (*i*).

In Chancery.

(*Full title.*)

The answer of Sir W. A., knight, Her Majesty's Attorney-General, on behalf of Her Majesty, to the Petition of Right of R. H., *&c.*

In answer to the said petition, I, Sir W. A., say as follows:

1. As to all and singular the matters and things in the said petition of right mentioned and contained, I leave the petitioners to make such proof thereof as they shall be enabled.

2. I claim, on behalf of Her Majesty, all such right and interest in the premises in the petition mentioned as I, on behalf of Her Majesty, shall appear to have therein, and submit the same to the judgment, order and direction of this honourable Court; and I pray that this honourable Court will take care of the rights and interests of Her Majesty in the premises.

W. A.
J. W.

(*h*) *Holmes* v. *The Queen*, 2 J. & H. 527: 8 Jur. N. S. 76; and see Dan. Pr. 123; 23 & 24 Vic. c. 34, s. 6. For forms of demurrers and pleas in suits between subjects, see *Index*, DEMURRERS.—PLEAS.

(*i*) *Re Brooke's Trust* (1863, B. No. 136); and see Dan. Pr. 123; 23 & 24 Vic. c. 34, s. 6; but see *Ryves* v. *Attorney-General*, 11 Jur. N. S. 878; 14 W. R. 17, 409, Prob. As to the Attorney-General's answer to a bill in equity, see also Dan. Pr. 128. For forms of answers in suits between subjects, see *Index*, ANSWER.

152.
Answer of another respondent (*k*).

In Chancery.

(*Full title.*)

The answer of E. F. to the Petition of Right of the above named A. B.

In answer to the said petition, I, E. F., say as follows:

1. I believe, *&c.*
2. Such charge, *&c.*
3. To the best, *&c.*

(*Name of counsel.*)

153.
Certificate of tenor and purport of decree (*l*).

To the Lords Commissioners of Her Majesty's Treasury [*Or*, To the Treasurer of Her Majesty's Household].

Petition of Right of A. B., in Her Majesty's High Court of Chancery at Westminster.

I humbly certify that on the —— day of ——, A.D. 187—, It was, by the said High Court of Chancery, decreed [*Or*, ordered] that the above named suppliant was entitled to, *&c.*

(*Judge's signature.*)

(*k*) See Dan. Pr. 123; 23 & 24 Vic. c. 34, s. 6; Ord. 1 Feb. 1862, rr. 4, 7; and Cons. Ord., Sched. C., *post*, No. 531.

(*l*) See Dan. Pr. 123; 23 & 24 Vic. c. 34, ss. 8, 9, 13, 14, and Sched. No. 5.

CHAPTER VI.

THE BILL.

SECTION I.—FORM OF THE BILL (*a*).

1. *Model Form.*

154.

(1.) Title of the suit (*b*).

In Chancery.

Between John Lee . . . Plaintiff,

and

James Styles and Henry Jones, . . . Defendants.

BILL OF COMPLAINT (*c*).

To the Right Honourable WILLIAM PAGE, BARON HATHERLEY, of Down Hatherley, in the county of Gloucester, Lord High Chancellor of Great Britain.

(2.) Address of the bill (*d*).

HUMBLY COMPLAINING, showeth unto his Lordship, John Lee, of Bedford Square, in the county of Middlesex, esquire, the above named plaintiff, as follows:—

(3.) Name and address of plaintiff (*e*).

1. The defendant James Styles, being seised in fee simple of a

(4.) Statements and allegations (*f*).

(*a*) As to the bill, in general, see Dan. Pr. 258, *et seq.* As to the authority necessary to commence or defend a suit, and the mode of staying an unauthorised suit, see Dan. Pr. 259; and *post*, Chap. XIX., XLIV. Ord. IX. 2, provides, that bills may be in a form similar to the form set out in schedule A. thereto, with such variations as the nature and circumstances of each particular case may require. The form so scheduled is that above set forth. For model forms of interrogatories and answer, corresponding to the model form of bill, see *post*, Nos. 359, 531; and for other forms and precedents of bills, interrogatories, answers, &c., see *post*, Chap. XLVI. As to the matter of which a bill in equity ought to consist, see Dan. Pr. 266, *et seq.*; as to the form of the bill, *ib.* 297, *et seq.*; and as to the value of the subject matter for which it may be filed, see Ord. IX. 1.

(*b*) For other forms, see *post*, No. 155.

(*c*) In the case of an information, (*Or*, information and bill), say: information (*Or*, information, and bill of complaint). If the bill, or information, is afterwards amended, say: Amended bill of complaint, &c.—*Or*, Re-amended bill of complaint, &c.

(*d*) For other forms, see *post*, Nos. 156—158.

(*e*) For other forms, see *post*, Nos. 159—194.

(*f*) For other forms, see *post*, Chap. XLVI.

farm called "*Blackacre*," in the parish of A, in the county of B, with the appurtenances, did, by an indenture dated the 1st of May, 1850, and made between the defendant James Styles of the one part, and the plaintiff of the other part, grant and convey the said farm, with the appurtenances, unto and to the use of the plaintiff, his heirs and assigns: subject to a proviso for redemption thereof, in case the defendant James Styles, his heirs, executors, administrators, or assigns should, on the 1st of May, 1851, pay to the plaintiff, his executors, administrators, or assigns, the sum of £5000, with interest thereon at the rate of £5 per centum per annum: as by the said indenture will appear.

2. The whole of the said sum of £5000, together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant Henry Jones claims to have some charge upon the farm and premises comprised in the said indenture of mortgage of the 1st of May, 1850: which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the said defendants James Styles and Henry Jones, and required them either to pay the said debt, or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants James Styles and Henry Jones pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

6. There are divers valuable oak, elm, and other timber and timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage of the 1st of May, 1850: which trees and timber are a material part of the plaintiff's said security; and if the same or any of them were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant James Styles, who is in possession of the said farm, has marked for felling a large quantity of the said oak and elm trees and other timber, and he has by hand-bills, published on the 2nd December instant, announced the same for sale, and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees and timber on the said farm.

(5.) Prayer (*g*).

PRAYER.

The plaintiff prays (*h*) as follows:—

1. That an account may be taken of what is due for principal and interest on the said mortgage.
2. That the defendants James Styles and Henry Jones may be decreed to pay to the plaintiff the amount which

(*g*) For other forms, see *post*, Chap. XLVI.

(*h*) In the case of an information, say: the informant prays; Or, if an information and bill, say: the informant and plaintiff pray.

shall be so found due, together with his costs of this suit, by a short day to be appointed for that purpose, or, in default thereof, that the defendants James Styles and Henry Jones, and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.

3. That the defendant James Styles may be restrained by the injunction of this honourable Court from felling, cutting, or disposing of any of the timber or timber-like trees now standing or growing in or upon the said farm and premises comprised in the said indenture of mortgage, or any part thereof.
4. That the plaintiff (*i*) may have such further or other relief as the nature of the case may require.

The defendants to this Bill of Complaint (*k*) are:— (6.) Defendants' names.
James Styles,
Henry Jones.

Y. Y.
(*Name of counsel.*)

NOTE.—This bill (*m*) is filed by Messrs. A. B. and C. D., of Lincoln's Inn, in the county of Middlesex, solicitors for the above named plaintiff (*n*). (7.) Name and address of plaintiff's solicitor (*l*).

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2. *Other Forms of Titles.*

155. Titles.

The title of the suit is a collection of the names of the plaintiffs, as they appear in the introductory part of the bill, and of the defendants as they are set forth at the foot of the prayer; and care should be taken that the names are the same in both cases. Where the plaintiff sues on behalf of himself and others, or is under disability, it is usual to state that fact in the title of the bill, and of the future proceedings in the cause; as thus:—

Between John Lee, on behalf of himself and all other the creditors of A. B., deceased (*o*) . . . plaintiff.
Or,
John Lee, an infant, by C. D., his next friend, plaintiff.

(*i*) *Or*, informant—*Or*, informant and plaintiff.

(*k*) *Or*, information—*Or*, information and bill of complaint.

(*l*) See Ord. III. 2, 5; Dan. Pr. 324, 378, 379. For other forms, see *ante*, Nos. 4, 7. On amending the bill, the name of the solicitor cannot be altered, unless an order to change has been obtained: Dan. Pr. 330, n. (*p*); Braithwaite's Pr. 299.

(*m*) *Or*, information—*Or*, information and bill.

(*n*) *Or*, relator—*Or*, relator and plaintiff.

(*o*) See Dan. Pr. 302, 332.

Or,

Thomas Jones, committee of the estate of John Lee, a person of unsound mind, so found by inquisition, and the said John Lee, by the said Thomas Jones, as his committee . . plaintiffs (*p*).

Or,

John Lee, a person of unsound mind, not so found, by C. D., his next friend . . . . . plaintiff.

Or,

Jane Lee, wife of the defendant John Lee, by C. D., her next friend . . . . . plaintiff.

Where, also, the defendant is stated to be out of the jurisdiction, or is named as a formal party only, the title should so express it; as thus:

Henry Jones, out of the jurisdiction (*q*),

Or,

James Styles, to be bound upon service of a copy of the bill (*r*).

It is not usual to state in the title of the bill that a defendant is under disability; but after a guardian *ad litem* of such defendant has been appointed, that fact should be stated in the title of all future proceedings; as thus:

James Styles, an infant, by Edward Styles, his guardian.

Or,

James Styles, a person of unsound mind, not so found, by Edward Styles, his guardian.

Or,

James Styles, and Amy the wife of the said James Styles, by Edward Styles, her guardian.

A person of unsound mind, so found, defending with his committee, may be described thus:

Edward Styles, committee of the estate of James Styles, a person of unsound mind, so found by inquisition, and the said James Styles, by the said Edward Styles, as his committee (*s*).

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3. *Other Forms of Address* (*t*).

156.

To the Queen. To the Queen's Most Excellent Majesty, in her High Court of Chancery.

(*p*) See *Booth* v. *Coulton*, 3 Dec. 1866, Reg. Lib. A. 2706.

(*q*) See Dan. Pr. 140, n. (*x*), 320, n. (*h*).

(*r*) See Dan. Pr. 320, n. (*h*).

(*s*) See *Beckwith* v. *Booth*, 17 Nov. 1866, Reg. Lib. A. 2640.

(*t*) As to the address, see Dan. Pr. 2, 267, 299, 329; Braithwaite's Pr. 16, n. (*a*), 451; 1 Van Hey. 2. An amended bill must be addressed to the same Lord Chancellor, &c., to whom the original bill was addressed, although a

157. To a Lord Keeper.

To the Right Honourable Sir A. B., knight, Lord Keeper of the Great Seal of Great Britain.

158. To Lords Commissioners.

To the Right Honourable Sir A. B., knight, Sir C. D., knight, and Sir E. F., knight, Lords Commissioners for the custody of the Great Seal of Great Britain.

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4. *Modes of describing Informants or Plaintiffs in Informations or Bills* (*u*).

159. Queen's Attorney or Solicitor-General, without a relator (*x*).

Informing, showeth unto his Lordship, Sir A. B., knight, Her Majesty's Attorney-General [*Or*, Sir C. D., knight, Her Majesty's Solicitor-General], on behalf of Her Majesty, as follows:

change has taken place in the custody of the Great Seal between the time of filing the original bill and the amendment: Dan. Pr. 329. Upon every change in the custody of the Great Seal, or alteration in the style of the person holding it, notice of the form in which bills are to be addressed is put up in the Record and Writ Clerks' office: Dan. Pr. 299. For a list of the titles of all the holders of the Great Seal since the year 1846, see *post*, Chap. XXVI., s. 4, n.

(*u*) As to the names and addresses of plaintiffs, see Dan. Pr. 299—302; 1 Van Hey. 3—5; Braithwaite's Pr. 19—22. If, at the time of amending the bill, the description of the plaintiff, or of his next friend, is not the same as when the original bill was filed, the new description should appear in the amended bill: Dan. Pr. 330, n. (*p*). For the practice as to requiring security for costs when the address of the plaintiff or his next friend is omitted, or incorrectly stated, or the plaintiff is mis-named, see Dan. Pr. 28—37, 300, 302; and *ante*, No. 75, *et seq.*

(*x*) As to informations by the Queen's Attorney or Solicitor-General, see Dan. Pr. 4—19. On amending an information, the proper name of the informant by whom the information was filed is retained, notwithstanding he may not be in office at the time when the information is amended. In the *title* of an information, or a bill, the Attorney-General, whether informant or defendant, is described as "Her Majesty's Attorney-General," without his proper name. The following is a list of all the Attorney and Solicitor-Generals since the year 1846, with the dates of their appointment:—

Attorney-Generals.—1846, July 7: Sir John Jervis—1850, July 11: Sir John Romilly—1851, March 28—Sir Alexander James Edward Cockburn—1852, Feb. 27: Sir Frederic Thesiger—1852, Dec. 28: Sir. A. J. E. Cockburn—1856, Nov. 29: Sir Richard Bethell—1858, Feb. 26: Sir Fitz Roy Kelly—1859, June 18: Sir Richard Bethell—1861, June 27: Sir William Atherton—1863, Oct. 2: Sir Roundell Palmer—1866, July 10: Sir Hugh MacCalmont Cairns—1866, Oct. 29: Sir John Rolt—1867, July 19: Sir John Karslake—1868, Dec. 12: Sir Robert Porrett Collier.

Solicitor-Generals.—1846, July 7: Sir David Dundas—1848, March 29: Sir John Romilly—1850, July 11: Sir A. J. E. Cockburn—1851, Mar. 28: Sir William Page Wood—1852, Feb. 27: Sir Fitz Roy Kelly—1852, Dec. 28: Sir Richard Bethell—1856, Nov. 26: Hon. James Stuart Wortley—1857, June 2: Sir Henry Singer Keating—1858, Feb. 26: Sir Hugh MacCalmont Cairns—1859, June 18: Sir H. S. Keating—1859, Dec. 16 Sir William

160. Same, with a relator (*y*).

Informing (*&c., as above, to* Majesty), at and by the relation of C. D., of (*residence and addition*), as follows:

161. Same, with a corporation aggregate as relator and plaintiff (*a*).

Informing (*&c., as above, to* Majesty), at and by the relation of the Conservators of the River C., in the county of C., by C. F., of (*residence and addition*), their clerk, the informant; and humbly complaining show unto his Lordship, the Conservators of the River C., in the county of C., by the said C. F., their clerk, the above named plaintiffs, as follows (*b*):

162. Same, with a private relator and plaintiff (*a*).

Informing (*&c., as in* No. 160, *to addition*), and humbly complaining, showeth unto his Lordship, the said C. D., the above named plaintiff, as follows:

163. Same, with a plaintiff (*a*).

Informing (*&c., as in* No. 159, *to* Majesty), and humbly complaining, showeth unto his Lordship, C. D., of (*residence and addition*), the above named plaintiff, as follows:

164. Same, on behalf of a lunatic (*c*).

Informing (*&c., as in* No. 159, *to* General), on behalf of C. D., of (*residence*), a lunatic, at and by the relation of E. F., of (*residence and addition*), as follows:

165. Attorney-General of Queen Consort (*d*).

Informing, showeth unto his Lordship, A. B., esquire, Attorney-General to Her Majesty, the Queen Consort, as follows:

166. Attorney-General of Prince of Wales (*e*).

Informing, showeth unto his Lordship, A. B., esquire, Attorney-General to his Royal Highness, Albert Edward, Prince of Wales and Duke of Cornwall, as follows:

167. Peer of the Realm.

Complaining (*f*), showeth unto his Lordship, the Most Noble A., Duke of B. [*Or*, the Most Honourable C., Marquess of D.—*Or*, the Right Honourable E., Earl of F.—*Or*, the Right Honourable

Atherton—1861, June 27: Sir Roundell Palmer—1863, Oct. 2: Sir R. P. Collier—1866, July 10: Sir William Bovill—1866, Nov. 29: Sir John Karslake—1867, July 19: Sir Charles Jasper Selwyn—1868, Feb. 6: Sir William Baliol Brett—1868, Sept. 16: Sir Richard Baggallay—1868, Dec. 12: Sir John Duke Coleridge.

(*y*) See Dan. Pr. 13. As to the effect of the relator's death, see *ib.* 16.

(*a*) As to an information and bill, see Dan. Pr. 13, 14.

(*b*) *Attorney-General* v. *Great Eastern Railway Co.* (1870, A. No. 14).

(*c*) See Dan. Pr. 8, 9, 15, 80.

(*d*) As to informations on behalf of the Queen Consort, see Dan. Pr. 19.

(*e*) As to informations on behalf of the Prince of Wales, see Dan. Pr. 7, 20.

(*f*) A peer complains, but not humbly. His address need not be set out: Dan. Pr. 301.

G., Viscount H.—*Or*, the Right Honourable J., Baron K.], the above named plaintiff, as follows:

168.

Complaining, showeth (*&c., as in* No. 167, *to* K.), and humbly complaining, showeth unto his Lordship, A. B., of (*residence and addition*), the above named plaintiffs, as follows: Peer and Commoner.

169.

Humbly complaining, showeth unto his Lordship, the Honourable A. B., commonly called Lord A. B., of (*residence*), the above named plaintiff, as follows: Courtesy title.

170.

Humbly, *&c.*, A. B., of (*residence and addition*), the above named plaintiff, as follows: Commoner.

171.

Complaining, show unto his Lordship, the United States of America, the above named plaintiffs, as follows (*h*): Government of Foreign State (*g*).

172.

Humbly complaining, show unto his Lordship, the Mayor, Commonalty, and Citizens of the City of London [*Or*, the Mayor, Aldermen, and Burgesses of the Borough of B.—*or as may be*], the above named plaintiffs, as follows: Corporation aggregate (*i*).

173.

Humbly, *&c.*, the Secretary of State in Council for India [on behalf of the Governor in Council of Madras, in the East Indies, and his successors, and Sir C. E. T., Knight Commander of the Most Honourable Order of the Bath, the present Governor in Council of Madras aforesaid], the above named plaintiffs, as follows: Secretary of State in Council for India (*j*).

174.

Humbly, *&c.*, the Governor and Company of the Bank of England, the above named plaintiffs, as follows: Bank of England (*k*).

175.

Humbly, *&c.*, the B. of L., a company incorporated by letters patent, and carrying on business in T. S., in the city of London, the above named plaintiffs, as follows: Incorporated Banking Company (*l*).

176.

Humbly, *&c.*, the East Pant Du United Lead Mining Company, Limited, the above named plaintiffs, as follows: Joint-Stock Company limited (*l*).

(*g*) As to suits by foreign states and governments, see Dan. Pr. 20—23.

(*h*) *United States of America* v. *Prioleau* (1865, U. No. 20).

(*i*) As to suits by corporations, see Dan. Pr. 23—27. The address of the corporate body need not be stated: Dan. Pr. 301.

(*j*) See *Secretary of State in Council for India* v. *Meffan* (1860, I. No. 7). In the title: "The Secretary of State in Council of India [on behalf of the Governor in Council of Madras and his successors]," plaintiffs.

(*k*) See 5 Will. & M. c. 20.

(*l*) As to suits by joint-stock companies, see Dan. Pr. 26, 27.

177.
Registered Joint-Stock Company (*m*).

Humbly, *&c.*, the N. and D. D. Banking Company, of the borough and county of N., the above named plaintiffs, as follows:

178.
District Asylum for the Poor (*n*).

Humbly, *&c.*, the Managers of the —— Asylum District, the above named plaintiffs, as follows:

179.
On behalf of Shareholders (*o*).

Humbly, *&c.*, F. H., of, *&c.*, on behalf of himself and all other the shareholders (except the defendants hereto) in a certain company called "The Portland Company, Limited," the above named plaintiffs, as follows:

180.
Public Officer (*p*).

Humbly, *&c.*, J. M., of, *&c.*, one of the duly registered public officers of the Y. & C. Company, for and on behalf of the said Company, the above named plaintiff, as follows:

181.
Official Manager (*q*).

Humbly, *&c.*, the Official Manager of the (*name of Company*), for and on behalf of the said Company, the above named plaintiff, as follows:

182.
On behalf of creditors (*r*).

Humbly, *&c.*, A. B., of (*residence and addition*), on behalf of himself and all other the creditors of C. D., late of (*residence and addition*), deceased [*Or*, and all other the creditors of C. D., of, *&c.*, for whose benefit the indenture of the —— day of ——, 187—, hereinafter stated, was made], the above named plaintiff, as follows:

183.
Trustee of a bankrupt's property (*s*).

Humbly, *&c.*, A. B., of (*residence and addition*), trustee of the property of C. D., a bankrupt, the above named plaintiff, as follows:

184.
Adult and Infant (*t*).

Humbly, *&c.*, A. B., of (*residence and addition*), and C. D., an infant, by the said A. B. [*Or*, by E. F., of (*residence and addition*)], his next friend, the above named plaintiffs, as follows:

(*m*) *Northumberland, &c., Banking Co.* v. *Walters* (1861, N. No. 18). The heading is the same, although the company is winding up.

(*n*) See 30 & 31 Vic. c. 6, s. 8.

(*o*) See Dan. Pr. 26, 172, 210, 302

(*p*) As to suits by public officers, see Dan. Pr. 26; 7 Will. IV. & 1 Vic. c. 73.

(*q*) As to suits by official managers and liquidators, see Dan. Pr. 27, n. (*a*).

(*r*) As to creditor suits, see Dan. Pr. 207—209, 302.

(*s*) See Bankruptcy Act, 1869 (32 & 33 Vic. c. 71), s. 83 (7). As to suits by trustees of bankrupts, see Dan. Pr. 59, *et seq.*

(*t*) As to suits by infants, see Dan. Pr. 65, *et seq.* The address of the infant need not be set out: *ib.* 301.

185. Infant by next friend (*u*).

Humbly, *&c.*, A. B., an infant, by C. D., of (*residence and addition*), his next friend, the above named plaintiff, as follows:

186. Idiot or lunatic by committee (*x*).

Humbly, *&c.*, A. B., of (*residence and addition*), committee of the estate of C. D., a person of unsound mind, so found by inquisition, and the said C. D., by the said A. B., as his committee, the above named plaintiffs, as follows:

187. Person of unsound or weak mind, not so found (*x*).

Humbly, *&c.*, A. B., a person of unsound mind not so found [*Or*, a person of weak mind], by C. D., of (*residence and addition*), his next friend, the above named plaintiff, as follows:

188. Husband and wife jointly (*y*).

Humbly, *&c.*, A. B., of (*residence and addition*), and C., his wife, the above named plaintiffs, as follows:

189. Husband alone, and wife by next friend (*z*).

Humbly, *&c.*, A. B., of, *&c.*, and C., the wife of the said A. B., by E. F., of, *&c.*, her next friend, the above named plaintiffs, as follows:

190. Wife, by next friend: husband a defendant.

Humbly, *&c.*, C. B., the wife of the defendant A. B., by E. F., of, *&c.*, her next friend, the above named plaintiff, as follows:

191. Same: husband living apart.

Humbly, *&c.*, C. B., the wife of A. B., of (*residence*), living separate and apart from him, by D. E., of (*residence and addition*), her next friend, the above named plaintiff, as follows:

191 a. Same: husband *civiliter mortuus* (*a*).

Humbly, *&c.*, C. B., of (*residence*), the wife of A. B., late of (*residence*), who hath abjured the realm [*Or*, who hath, by due course of law, been sentenced to transportation to parts beyond the sea, where he now is—*Or*, who is an alien enemy—*or as may be*], the above named plaintiff, as follows:

(*u*) See last note.

(*x*) See *Booth* v. *Coulton*, 3 Dec. 1866, Reg. Lib. A. 2706. As to suits by idiots, lunatics, and persons of weak mind, and committees, see Dan. Pr. 80—83. The address of the non-compos need not be stated: *ib.* 301.

(*y*) As to suits by husband and wife, see Dan. Pr. 84, 102, 103.

(*z*) As to suits by a married woman, by her next friend, see Dan. Pr. 102—104.

(*a*) See 1 Van Hey. 3; Dan. Pr. 84, 85, 103, n. (*b*).

192.
Wife, by next friend: husband residing abroad (*b*).

Humbly, *&c.*, C. B., of (*residence*), the wife of A. B., who is now residing at G., out of the jurisdiction of this honourable Court, by E. F., of, *&c.*, her next friend, the above named plaintiff, as follows:

193.
Wife, as a *feme sole* (*c*).

Humbly, *&c.*, C. B., of (*residence*), the wife of A. B., of, *&c.*, suing as a *feme sole* [*Or*, but who has obtained a statutory order for protection from her husband (*d*)], the above named plaintiff, as follows:

194.
Where bill is addressed to the Queen (*e*).

Most humbly complaining, showeth unto your Majesty, your Majesty's most dutiful and loyal subject, A. B., of, *&c.*, the above-named plaintiff, as follows:

(*b*) As to suits by a married woman, where her husband is *ex jur.*, see Dan. Pr. 84, 85, 103, n. (*b*).

(*c*) See Dan. Pr. 301. As to when a married woman may sue as a *feme sole*, see Dan. Pr. 84, 85, 300; and *in formâ pauperis*, without a next friend: *ib.* 38, 105; and *ante*, Nos. 97, 98.

(*d*) Or, but who has obtained an order, dated the — day of —, 187—, under the 21st section of the statute 20 & 21 Victoria, for protection of her earnings and property from the said A. B., her husband, and all persons claiming under him.

(*e*) See Dan. Pr. 2, 299.

Section II.—Printing and Filing the Bill.—Branch of Court.—Affidavit to accompany.—Registry as lis pendens.

195.

Directions as to the manner of printing bills and answers, and correcting the proof sheets (*f*).

It is the business of the plaintiff to get the bill printed by such printer as he may select (*g*). Bills must be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, in pica type, leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a-half wide; and dates and sums occurring therein must be expressed by figures instead of words (*h*). Answers must be printed on paper of the same size and description, and in the same type, style, and manner on and in which bills are required to be printed (*i*).

In printing the title of the cause, and the names of the defendants at the foot of the prayer, the name of each plaintiff and of each defendant should form a separate line (*k*). Quotations occurring in a bill or answer should be distinguished by turned commas; but it is not now the practice to use any marks of punctuation in printing bills and answers.

The first printed copy, furnished by the printer, of the bill or answer (*l*) is called "a proof" (*m*). When a fair print of the proof as altered and corrected is required, the words "Send revise" should be written on the upper part of the first page, before it is returned to the printer. The fair print is called "a revise"; and if a second fair print, as further altered, is needed, the words "Send a second revise" should be marked on it, as above. When the print is finally approved, the word "Press," together with the number of copies required to be struck off, should be written on the first page, on returning it to the printer.

In settling for the printer the draft or copy of the bill or answer, and in making additions to the proofs and revises, such words as are required to be printed in *italics* should be scored under once; if in SMALL CAPITALS, twice; and if in CAPITALS, three times; and attention to the following rules in correcting the proofs and revises will much facilitate the passage of the bill or answer through the press:—

(*f*) See Dan. Pr. 322.

(*g*) As to when a written bill will be temporarily allowed to be filed, see Dan. Pr. 323.

(*h*) Ord. IX. 3; Dan. Pr. 322.

(*i*) Ord. 6 Mar. 1860, r. 3; Dan. Pr. 659.

(*k*) As in No. 154, *ante*.

(*l*) The draft or copy of the bill or answer, as placed in the hands of the printer, is technically called "copy."

(*m*) The proof of the bill should be very carefully examined and corrected: as no bill will be filed as a printed bill unless alterations, if any, are made in type: Dan. Pr. 322, n. (*z*).

(1.) If a word printed in small letters is to be changed to capitals: draw a line under it, and write *caps.* in the margin.

(2.) If a word so printed is to be changed to small capitals: draw a line under it, and write *sm. caps.* in the margin.

(3.) If a word so printed is to be changed to italic: draw a line under it, and write *ital.* in the margin.

(4.) If a word printed in capitals is to be changed to small capitals: draw a line under it, and write *sm. caps.* in the margin.

(5.) If a word printed in small capitals is to be changed to small letters: draw a line under it, and write *l. c.* (lower case) in the margin.

(6.) If a word printed in italic is to be changed to roman: draw a line under it, and write *rom.* in the margin.

(7.) If a break or new paragraph has been omitted to be made: place a vertical mark before the first word of the new paragraph, and write *n. p.* in the margin.

(8.) If marks of quotation are omitted: indicate the places by carets, and place turned commas in the margin.

(9.) If a break has been improperly made: draw the pen from one line to the other, and write *run on* in the margin.

(10.) If a letter or word is omitted: point out the omission by a caret, and place the omitted letter or word in the margin.

(11.) If several words are omitted: indicate the place by a caret, insert *Rider A.* (or, *B.*, *&c.*) in the margin, and write the omitted words at the top or bottom of the page, or on an annexed slip of paper: preceded, in either case, by the like sign of *Rider A.*, *&c.*

(12.) If a word is to be omitted: strike it through, and write *dele* in the margin.

(13.) If one word is to be substituted for another: strike out the word to be omitted, and write the substituted word in the margin.

(14.) If a word, though struck out, is to remain in: place dots under it, and write *stet* in the margin.

(15.) Where words are transposed: write *trs.* in the margin, and indicate the order in which they should stand by a wave line; or by numbers placed over the words, if the words are not contiguous, or more than three are misplaced.

(16.) If a wrong letter is used: draw the pen through it, and place the right letter in the margin.

(17.) If a capital letter is used instead of a small letter: draw the pen through it, and write *l. c.* (lower case) in the margin.

(18.) If a small letter is used instead of a capital: draw the pen through it, and write *cap.* in the margin.

(19.) Where letters are transposed: strike them through, and place the proper letters in the margin.

(20.) If a letter of a wrong size or face is used: draw a line through it, and write *w. f.* (wrong fount) in the margin.

(21.) If a space between two words is omitted: place a caret between the words, and put this (#) mark in the margin.

(22.) If two letters are to be drawn together: place these marks (⁀) between them, and also in the margin.

(23.) If a wrong mark of punctuation is used: draw the pen through it, and place the right mark in the margin.

(24.) If a letter is placed upside down: draw the pen through it, and place this mark (ɔ) in the margin.

(25.) Where lines or words are not straight: indicate it by short lines under the words, and write *straighten* in the margin.

(26.) If a hyphen is to be inserted: indicate the place by a caret, and place this mark (/-/) in the margin.

(27.) Where a black mark (called a space or quadrat) appears: underscore it, and place this mark (⊥) in the margin.

The above rules are exemplified in the following specimen of a proof corrected in manuscript. The proof is printed in "pica type, leaded" (*n*), and the numbers in the margin correspond with the numbers of the rules:

(1) Caps. (2) Sm. caps.

Bill of Complaint.

To the Right Honourable William Page, Baron Hatherley, of Down Hatherley, in the county of Gloucester, Lord High Chancellor of Great Britain.

(4) Sm. caps. HUMBLY COMPLAINING, showeth (5) l. c. unto his Lordship, John Lee, of Bedford (6) rom. Square, in the county of *Middlesex*, esquire, the above named plaintiff, as follows:—(7) n. p. 1. The defendant James Styles, being seized in fee simple of a farm (3) ital. (8) a/" called Blackacre in the parish of A., in the county of B., with the appurte- (9) run on nances

(10) e/defendant did, by an indenture dated the 1st of May, 1850, and made between the James Styles of the one part, and the plaintiff of the other part, grant and convey (11) Rider A unto and to the use of the plaintiff, his heirs and assigns: subject to a proviso

Rider A. the said farm, with the appurtenances,

(*n*) See *supra*.

(12) dele (13) James (14) Stet (15) trs. (16) o/ (17) l.c. (18) cap. (19) thf (20) w.f. (21) # (22) ⊂ (23) s/ (24) s (25) Straighten (26) H (27) !

~~or agreement~~ for redemption thereof, in case the defendant ~~Thanas~~ Styles, his heirs, executors, ~~administrators,~~ or assigns should, on the 1st of May, 1851, to the plaintiff, pay his executors, administrators, or assigns, the sum of £5000, with interest thereon, at the rate of £5 per centum per annum: as by the said indenture will appear.

2. The whole of the said sum of £5000, together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant Henry Jones claims to have some charge upon the farm and premises comprised in the said indenture of mortgage of the 1st of May, 1850: which charge is subsequent to the plaintiff's said mortgage

4. The plaintiff has frequently applied to the said defendants James Styles and Henry Jones and required them either to pay the said debt, or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants James Styles and Henry Jones pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

6. There are divers valuable oak, elm, and other timber and timberlike trees growing and standing, &c.

The appearance of the revise, or corrected print, of the above proof will be understood by referring to No. 154, *ante*: in which all the corrections are shown.

196.

Reference to the record; and date of filing.

On the bill being filed (*o*), the Record and Writ Clerk will insert at the top or upper part of the bill, the year, the letter, and the number by which the cause is distinguished in the cause book kept by him; as thus: 1871. A. No. 50; and this "reference to the record" must thenceforth be plainly written or stamped on the first page of every decree, order, report, certificate, petition, or document made, presented, or used in such cause (*p*). The Record and Writ Clerk will also add to the bill the date on which it was filed (*q*); as thus: Filed 1st day of January, 1871.

If the bill is afterwards amended—or, re-amended—that fact is also noted on the bill; as thus: Amended 21st day of January, 1871, by order dated 19th day of January, 1871—Re-amended 1st day of March, 1871, by order dated 24th day of February, 1871.

In practice, the appropriate memorandum is printed on the original bill, and on the reprint, if any, of the amended or re-amended bill, before it is tendered for filing; but the memorandum may, in every case, be written, instead of printed (*r*).

197.

Branch of Court.

Before any original bill is filed it must, at the option of the plaintiff, be distinctly marked, at or near the top or upper part thereof, either with the words "Lord Chancellor," or with the words "Master of the Rolls"; and if with the words "Lord Chancellor," then also with the name of one of the Vice-Chancellors for the time being, at the option of the plaintiff (*s*). The usual place is immediately under the words "In Chancery"; as

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(*o*) A fee of 20*s*. higher scale, or 10*s*. lower scale, is payable in fee fund stamps affixed to the bill, on filing it: Dan. Pr. 326, n. (*i*); Regul. to Ord. Sched. 4, *post*, Chap. XXXI.

(*p*) Ord. I. 48; Dan. Pr. 326; and *ante*, No. 1.

(*q*) Ord. I. 45; Dan. Pr. 326.

(*r*) As to amended bills, see Ord. IX. 19; Dan. Pr. 349.

(*s*) Ord. VI. 1; Dan. Pr. 320, 324. The word "bill" includes "information:" Prel. Ord. 10 (4). The Judge's name may be either written or printed

thus:

In Chancery.
Lord Chancellor.
Vice-Chancellor Stuart.
[*Or*,
Vice-Chancellor Malins.
Or,
Vice-Chancellor Bacon.]
Or,
In Chancery.
Master of the Rolls (*t*).

198.

Affidavit by plaintiff, to accompany bill to obtain the benefit of a lost instrument (*u*).

In Chancery.

(*Full title.*)

I, A. B., of (*Residence and addition*), the above named plaintiff, make oath and say, as follows:—

1. *State loss of the instrument; as thus:* Sometime since, to wit on or about the —— day of ——, 18—, the (*Describe the instrument; as:* promissory note, dated the —— day of ——, 18—,) mentioned in the —— paragraph of the bill in this cause hereunto annexed [*Or*, now produced and shown to me, and marked A.], was in my custody or possession; but I have since accidentally lost the same; and I do not know where the said promissory note [*or as may be*] now is, unless it is in the custody or possession of the above named defendants, or some or one of them.

199.

Motion paper, for transfer of a bill suit from one

Formal parts: see ante, No. 53.

To apply, on behalf of all parties, to the Lord Chancellor, or the Lords Justices, that this suit, which is now attached to the Court of the Master of the Rolls [*Or*, Vice-Chancellor ——],

on the bill: Dan. Pr. 324, n. (*r*). For order for the Clerk of Records and Writs to mark the name of one V. C. for that of another, on the plaintiff's bill, and directing the same to be thereafter considered as a cause originally marked for the former, see *Steele* v. *Midland Railway Co.*, L. C., 11 Jan. 1869, Reg. Lib. B. 49, on motion by plaintiff. As to the attachment of a cause to the branch of the Court for which it was originally marked, see Dan. Pr. 324; Ord. VI. 5, 9, 11. For the practice in suits instituted before 20 May, 1837, or before 11 Nov. 1841, respectively, see Gen. Ord. of those dates, in Cons. Ord. Prel. Ord. 1 (2), and Appx.; Braithwaite's Manual, 201.

(*t*) The present Master of the Rolls, then Sir John Romilly, was appointed 28th March, 1851; and was created a Peer of the Realm, by the title of Lord Romilly, of Barry in the county of Glamorgan, on the 3d Jan. 1866.

(*u*) See Dan. Pr. 321. As to when the bill must be accompanied by an affidavit, see, in general, Dan. Pr. 320—322; in cases of discovery, *ib.* Chap. XXXIV. s. 2; in cases of interpleader, *ib.* s. 3; and in suits to perpetuate testimony, *ib.* s. 4. A written or printed copy of the affidavit should be annexed to each copy of the bill sealed for service, and be served therewith: Dan. Pr. 322, 367. No fee is payable on filing the affidavit, when annexed

If set down, add: and set down to be heard before him, may be transferred to the Court of the Vice-Chancellor —— [*Or*, Master of the Rolls], and marked in the Record and Writ Clerks' book accordingly. And to apply to the (*Names of Judges from and to whose Courts the transfer is to be made*), for their consent to such transfer being made.

branch of the Court to another (*x*).

200.

Formal parts of notice of motion to the Lord Chancellor, or Lords Justices: see ante, No. 55.
on the part of the plaintiff [*Or*, defendant A. B.], that this suit (*Continue as in* No. 199, *ante, to* accordingly).

Notice of motion, for the like (*x*).

201.

Formal parts: see ante, No. 53.
To apply, on behalf of the plaintiff [*Or*, defendant A. B.], to the Lord Chancellor or Lords Justices, for leave to give the annexed notice of motion (*a*). And to apply to the (*Names of Judges from and to whose Courts the transfer is to be made*), for their consent to the transfer therein mentioned being made.

Motion paper, for leave to give such notice (*y*).

202.

Formal parts: see ante, No. 53.
To apply, on behalf of the plaintiff [*or as may be*], to the Lord Chancellor, or Lords Justices, that this cause, by the General Order of the ——, 187—, transferred from the cause book of the Master of the Rolls [*Or*, Vice-Chancellor ——] to the cause book of the Vice-Chancellor —— [*Or*, Master of the Rolls], may be re-transferred to the cause book of the Master of the Rolls [*Or*, Vice-Chancellor ——], and marked accordingly in the Record and Writ Clerks' book.

Motion paper, for the re-transfer of a cause transferred under a General Order (*b*).

to the bill filed: Dan. Pr. 322, n. (*y*). For forms of affidavit in cases of discovery and interpleader, see *post*, Chap. XXXIV.; and for forms of demurrer for want of the affidavit, see 2 Van Hey. 76, 77.

(*x*) See *Physick* v. *Harvey*, L.C., 12 Jan. 1869, Reg. Lib. B. 15; and see Seton, 1268, Nos. 1—3. As to the transfer of causes, see Dan. Pr. 68, 325; Ord. VI. 5; Seton, 890. For order for the transfer of a special case, see *Senior* v. *Senior*, L. C., 11 Jan. 1869, Reg. Lib. B. 10. For order for the transfer of a summons suit, after the hearing, see Seton, 1268, No. 4. If one of the causes is attached to the Rolls' Court, the order of transfer must be made by the Master of the Rolls, as well as by the Lord Chancellor, or Lords Justices: Dan. Pr. 325; 5 Vic. c. 5, s. 30. For order in such case, see *Jackson* v. *Parkin*, L. C. and M. R., 11 Jan. 1864, Reg. Lib. A. 50.

(*y*) See Dan. Pr. 325.

(*a*) Annex a copy of the notice.

(*b*) See Dan. Pr. 325, n. (*e*). For order in like case, see *Gibson* v. *Dawson*, L. C. and M. R., 24 June, 1865, Reg. Lib. A. 1243; and see Seton, 1269, No. 5. It seems the order is in the nature of an order *nisi*, and notice of the application need not be given: see *Wilson* v. *Gray*, 14 W. R. 783, L. C. Ld. Cranworth; Dan. Pr. 325, n. (*e*).

203.

Order of succession among the Vice-Chancellors (*c*).

I. (*d*)	II. (*e*).	III.
1813, April 14: Sir Thomas Plumer.	1841, Oct. 8: Sir James Lewis Knight-Bruce.	1841, Oct. 8: Sir James Wigram (*f*).
1818, Jan. 6: Sir John Leach.	1851, Oct. 8: Sir James Parker.	1851, March 28: Sir George James Turner (*g*).
1827, May 2: Sir Anthony Hart.	1852, Sept. 20: Sir John Stuart.	1853, Jan. 10: Sir William Page Wood (*h*).
1827, Nov. 1: Sir Lancelot Shadwell.	1870, April 18: Sir John Wickens.	1868, March 11: Sir George Markham Giffard (*h*).
1850, Nov. 2: Sir Robert Monsey Rolfe (Lord Cranworth).	1873. Sir Chas. Hall.	1869, Jan. 2: Sir William Milbourne James (*h*).
1851, Oct. 8: Sir Richard Torin Kindersley.		1870, July 4: Sir James Bacon (*h*).
1866, Dec. 3: Sir Richard Malins.		

204.

Undertaking to file printed bill (*i*).

In Chancery.

(*Short title.*)

I hereby undertake to file a printed copy of the plaintiff's bill in this cause [*Or, if undertaking indorsed on bill, say:* of this bill] within fourteen days from the date hereof. Dated this —— day of ——, 187—.

A. B., the plaintiff [*Or*, the plaintiff's solicitor—*Or*, the plaintiff's agent].

(*c*) As to the attachment of causes to a Vice-Chancellor's successor, see Dan. Pr. 325, n. (*y*); Ord. VI. 7. See also the General Orders from time to time made for the transfer of causes from one branch of the Court to another; and, prior to Ord. VI. 7, from the Court of a deceased or retired Vice-Chancellor to the Court of his successor in office. As to the rank and precedence of the three Vice-Chancellors, see 5 Vic. c. 5, s. 25; 14 & 15 Vic. c. 4, s. 2; 15 & 16 Vic. c. 80, s. 53.

(*d*) All appointed under 53 Geo. III. c. 24.

(*e*) All appointed under 5 Vic. c. 5.

(*f*) Appointed under 5 Vic. c. 5. By General Order of 2 Nov. 1850, every cause and matter which, at the time of the resignation of Sir James Wigram, was attached to his Court, was transferred to the Court of V.-C. Knight-Bruce, and thenceforth attached thereto: unless removed therefrom by any special order of the Lord Chancellor.

(*g*) Appointed under 14 & 15 Vic. c. 4.

(*h*) Appointed under 15 & 16 Vic. c. 80, s. 52.

(*i*) See Dan. Pr. 323. For the cases in which a written, instead of a printed, bill is temporarily allowed, see Dan. Pr. 323; 15 & 16 Vic. c. 86, s. 6; and see

205.
Motion paper, for leave to file printed bill after the fourteen days, where no appearance entered (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that notwithstanding the time limited by the 9th Cons. Ord. rule 4, has expired, the written bill filed by him on the ——, 187—, which has been taken off the file pursuant to that order, may be restored to the file, and a printed copy thereof be received and filed as of the ——, 187— (*Last of the fourteen days allowed for filing the printed copy*).

No appearance has yet been entered.

206.
Notice of motion, or summons, for the like, after appearance (*l*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that (*Continue as in last Form, to* as of the ——, 187—).

207.
Notice of motion, to take written and printed bills off the file, where they differ (*m*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the written bill filed by the plaintiff on the ——, 187—, and the printed bill filed by the plaintiff on the ——, 187—, may be taken off the file of this Court, for irregularity: the said printed bill not being a true copy of the said written bill; and that the plaintiff (*If the plaintiff's solicitor has personally undertaken to file the printed copy, add:* and Mr. C. D., his solicitor in this suit, or one of them,) may be ordered to pay to the said defendant all the costs incurred by him in this suit, and of this application.

208.
Notice of motion, to take bill off the file for want of counsel's signature (*n*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff's bill in this suit may be taken off the file of this Court, for irregularity: such bill not being, nor purporting to be, signed by counsel

Or, the name or signature of C. D., esquire, barrister at law, being forged to the said bill;

Or, such bill having been altered since the draft thereof was

Ord. IX. 4; XL. 18. Written bills must be written upon paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195.

(*k*) See Dan. Pr. 323; 15 & 16 Vic. c. 86, s. 6; Ord. IX. 4.

(*l*) For order in like case, on summons, and enlarging time to file interrogatories, see *Evans* v. *Price*, V. C. B. at Chambers, 2 Aug. 1870, Reg. Lib. A. 2192; and see Dan. Pr. 323; 15 & 16 Vic. c. 86, s. 6; Ord. IX. 4; Seton, 1242, No. 1. The application must be supported by an affidavit accounting for the delay: Dan. Pr. 324; Braithwaite's Manual, 153.

(*m*) See Dan. Pr. 323, n. (*e*), 324; Ord. IX. 4.

(*n*) See Dan. Pr. 265, 326. As to the necessity of counsel's signature to a bill, see *ib.*; Ord. VIII. 1, 2; and as to the course where counsel's signature is forged, or the bill has been altered since counsel signed it, see Dan. Pr. 266.

signed by C. D., esquire, barrister at law, whose name or signature appears at the foot of the said bill;

and that the plaintiff (and Mr. E. F., the solicitor by whom the said bill was filed,) may be ordered to pay to the defendant his costs of this suit, and of this application.

209.

Certificate of information being proper for the informant's sanction (*o*).

I hereby certify that this information is proper for the sanction of Her Majesty's Attorney-General. Dated this —— day of ——, 187—.

(*Counsel's signature*).

210.

The like, of amended information (*p*).

I hereby certify that this information, as amended, is proper for the sanction of Her Majesty's Attorney-General; and that the amendments therein are not made for the purpose of delay. Dated this —— day of ——, 187—.

(*Counsel's signature.*)

211.

Certificate of ability of relator to pay costs, and verifying print (*q*).

I hereby certify that A. B., the proposed relator in this information, is a proper person to be such relator; and that he is competent to answer the costs thereof.

I also certify that this is a true copy of the draft information, as settled and signed by Mr. C. D., as counsel for the informant. Dated this —— day of ——, 187—.

E. F., of, *&c.*,
Solicitor.

212.

Certificate verifying reprint (*r*).

I hereby certify that this is a true copy of the draft amended information, as settled and signed by Mr. C. D., as counsel for the informant. Dated (*&c., as in last Form*).

213.

Notice of motion, to take information off the file, for want of the informant's sanction (*s*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the information [*Or*, amended information] in this suit may be taken off the file of this Court, for irregularity: the same not being, nor purporting to be, signed by Her Majesty's Attorney-General, the informant therein named; and that A. B., the person named as the relator in the said information, may be ordered to pay to the defendant his costs of this suit, and of this application.

(*o*) See Dan. Pr. 326. As to informations, see Dan. Pr. 2.
(*p*) See Dan. Pr. 326, 348.
(*q*) *Ibid.* 326.
(*r*) *Ibid.* 348.
(*s*) *Ibid.* 265, n. (*o*), 348; Prel. Ord. 10 (4); Ord. VIII. 1.

214.
Memorandum for the registry, or re-registry, of a bill, information, special case, or administration summons, as a *lis pendens* (*t*).

Filed (*u*) the —— day of ——, 187—, by A. B., of (*Place of business*), Plaintiff's solicitor.	LIS PENDENS. A (*x*) bill [*Or*, An information—*Or*, A special case—*Or*, An administration summons] filed in the High Court of Chancery on the —— day of ——, 187—. (*y*) TITLE OF THE CAUSE. (*Set out the names of all the parties* (*z*).)

NAME, ETC., OF THE PERSON WHOSE ESTATE IS INTENDED TO BE AFFECTED.

Surname.	Christian name or names.	Usual or last known place of abode.	Title, trade, or profession.
Brown	Edward James	No. 800, Oxford Street, in the county of Middlesex.	Linen-draper.

215.
Acknowledgment of satisfaction of a *lis pendens* (*a*).

Satisfaction is acknowledged between A. B. and C. D., as to a bill [*Or*, an information—*Or*, a special case—*Or*, an administration summons], filed in the High Court of Chancery on the ——

(*t*) See Dan. Pr. 327, 328; 2 & 3 Vic. c. 11; 18 & 19 Vic. c. 15, s. 6. As to the registry of a special case, see Dan. Pr. Chap. XLIII; 13 & 14 Vic. c. 35, s. 17; and of a summons, see Dan. Pr. Chap. XXIX. s. 2 (2); 15 & 16 Vic. c. 86, s. 46. The memorandum must be on parchment, and a separate memorandum is required for every defendant or other person in whose name the registry is proposed to be made: Pask's Pr. 12; Dan. Pr. 327. A fee of 2*s*. 6*d*. is payable for each entry, and of 1*s*. for each re-entry: 2 & 3 Vic. c. 11, ss. 4, 7.

(*u*) If for re-registry, say, "Filed for re-entry."

(*x*) If for re-registry, say, "A re-entry of a bill," [*Or*, "of an information"—*Or*, "of a special case"—*Or*, "of an administration summons"].

(*y*) If for re-registry, add here, "Entered before on the —— day of ——, 187—."

(*z*) In the case of an administration summons, the full title of the matter and cause should be set out, exactly as it appears in the summons.

(*a*) See Dan. Pr. 328, 329; 23 & 24 Vic. c. 115, s. 2. The acknowledgment must be on parchment; and be signed by the plaintiff, his executor or

day of ——, 187—, in a cause wherein the said A. B. is plaintiff, and the said C. D. is defendant [*or as may be*]: a memorandum of which said bill [*or as may be*] was left with the Senior Master of the Court of Common Pleas at Westminster on the ——day of ——, 187—, to affect the estate of the said C. D.

And I, the said A. B. [*Or*, I, E. F., the executor (*Or*, administrator) of the said A. B.], do hereby expressly nominate and appoint G. H., of (*Place of business*), attorney at law, to witness and attest the execution of this acknowledgment of satisfaction.

Signed by the said A. B. [*Or*, E. F.], in the presence of me, the undersigned G. H., one of the attorneys of her Majesty's Court of Queen's Bench [*Or*, Common Pleas—*Or*, Exchequer of Pleas] at Westminster. And I hereby declare myself to be the attorney for and on behalf of the said A. B. [*Or*, E. F.], expressly named by him, and attending at his request, to inform him of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by him); and I also declare that I subscribe my name as witness hereto, as such attorney.

G. H., of (*Place of business*).

A. B.,
the above named plaintiff,
[*Or*, E. F., the executor (*Or*, administrator) of the above named plaintiff A. B.] the —— day of ——, 187—.

216.

Petition of course, for the entry of satisfaction of a *lis pendens*, by consent (*b*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A.B.].

Showeth as follows:

1. *Show the institution of the cause; as thus:* On the —— day of ——, 187—, your petitioner [*Or*, the plaintiff] filed his bill [*Or*, special case] in this cause against the defendant A. B. [*Or*, your petitioner].

administrator, and attested by an attorney. Where there are several plaintiffs, and the signatures of all to the acknowledgment cannot be obtained, those who sign should do so on behalf of themselves and their co-plaintiffs; as thus: "A. B., one of the above named plaintiffs, on behalf of myself and C. D., the other plaintiff above named": see Pask's Sup. 31, 32, ed. 3. For full instructions as to executing an acknowledgment of satisfaction, see *ib.* 31—34. The fee for entering satisfaction is 2*s.* 6*d.*; and for a certificate of such entry, 1*s.*: 23 & 24 Vic. c. 115, s. 2.

(*b*) See Dan. Pr. 328. For order in like case, on petition of plaintiff, see *Whitney* v. *Smith*, M. R. 27 April, 1870, Rolls' Lib.; and on petition of defendants, the plaintiff consenting, see *Ecclesiastical Commissioners for England* v. *Marshall*, M. R. 14 July, 1870, Rolls' Lib. The practice of getting the entry of a *lis pendens* satisfied under an order obtained on petition of course is still frequently resorted to, notwithstanding the 23 & 24 Vic. c. 115, s. 2, mentioned above; and see Pask's Sup. 30, n. (*l*), ed. 3.

Or, On the —— day of ——, 187—, a summons in this matter and cause was taken out at the Chambers of your lordship [*Or*, of his honour the Vice-Chancellor ——], on the part of your petitioner against the defendant A. B. [*Or*, on the part of the plaintiff against your petitioner], for the administration of the estate of the above named J. T.; and a duplicate of the said summons was filed in the office of the Clerks of Records and Writs on the —— day of ——, 187—.

2. *State the registration as a lis pendens; as thus:* On the —— day of ——, 187—, a memorandum of the said bill [*Or*, special case—*Or*, summons] was filed with the Senior Master of the Court of Common Pleas at Westminster, for entry as a *lis pendens*, pursuant to the statute in this behalf, so as to affect the estate of the defendant A. B. [*Or*, your petitioner]: who was described in such memorandum as (*Insert name, and place of abode, &c*).

If so: and on the —— day of ——, 187—, a like memorandum was filed with the said Senior Master, for re-entry pursuant to the said statute.

3. *State desire to vacate entry; as thus:* The purposes for which the said bill [*Or*, special case,—*Or*, summons] was registered as aforesaid have been satisfied, and your petitioner is desirous that the entry of the said *lis pendens* should be discharged.

Your petitioner therefore humbly prays, that the proper officer may be at liberty to enter satisfaction in respect of the said *lis pendens*, so registered as aforesaid, in the books kept by him for that purpose (*c*).

And your petitioner will ever pray, &c.

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217. Special petition, for the entry of satisfaction of a *lis pendens* (*d*).

Title—and address to the L. C., or M. R.: see ante, No. 57.

The humble petition of the above named defendant A. B. Showeth as follows:

1. 2. *State the institution of the cause, and the registration of the lis pendens: as in* No. 216, *ante.*

3. *State ground for requiring the registration to be vacated.*

4. *State refusal to consent to the registration being vacated; as thus:* Your petitioner has applied to the said plaintiff to acknowledge satisfaction, or cause satisfaction to be entered, or consent to satisfaction being entered, in respect of the said *lis pendens*, in

(*c*) When the defendant petitions, the consent of the plaintiff's solicitor to the prayer must be obtained. For form of consent, see *ante*, No. 59. If the plaintiff declines to apply, or to consent to an application by the defendant, for an order to enter satisfaction, the order may be obtained on special petition, motion, or summons: see Dan. Pr. 328; and Forms 217 and 218, *post*.

(*d*) See Dan. Pr. 328, 329; and 30 & 31 Vic. c. 47, s. 2. The fee for every entry of discharge under the Act is 2*s.* 6*d.*; and for every certificate of such entry, 1*s.*: *ib.*

the proper books kept for that purpose; but the said plaintiff refuses to comply with such application.

Your petitioner therefore humbly prays, that the registration of the said *lis pendens*, as against your petitioner, may be vacated; and that an entry of the discharge of such *lis pendens* may be directed to be entered on the register kept by the Senior Master of the Court of Common Pleas at Westminster pursuant to the statute in this behalf; and that the plaintiff C. D. may be ordered to pay to your petitioner all his costs and expenses occasioned by the registration of the said *lis pendens*, and of this application, and of vacating the said registration [*or as may be*]: to be taxed by the Taxing Master in case the parties differ.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

218.

Notice of motion, or summons, for the entry of satisfaction of a *lis pendens* (*e*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B.

1. That the registration, on the —— day of ——, 187—, of the plaintiff's bill [*Or*, of the special case—*Or*, administration summons] in this cause as a *lis pendens*, in the register kept by the Senior Master of the Court of Common Pleas at Westminster, to affect the estate of the applicant, may be vacated; and that an entry of the discharge of such *lis pendens* may be directed to be entered on the said register.

2. That the plaintiff C. D. may be ordered to pay to the applicant all his costs and (*Continue as in* No. 217, *ante, to* differ).

(*e*) See last note. For order on summons, previous to the 30 & 31 Vic. c. 47, s. 2, see *Fowler* v. *Liles*, V. C. S., 15 June, 1855, Reg. Lib. A. 1037, V. C. S.: Dan. Pr. 329, n. (*i*).

Section III.—Amending the Bill (*f*).

219. Motion paper, to amend clerical errors (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend his bill, in respect of the following clerical errors therein, namely: (*State shortly the corrections desired; as:*

by substituting the name "Smythe," for the name "Smith," throughout the said bill; by substituting the date "1864," for the date "1846," in the paragraph numbered 2; and by substituting the sum "£500," for the sum "£300," in the paragraphs numbered 4, 6, and 10.

Or, by inserting at the foot of the said bill, the name of "—", esquire, the counsel by whom such bill has been settled and signed).

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220. Petition of course, for the like (*h*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth, that your petitioner lately filed his bill in this suit; and has since discovered certain clerical errors therein.

Your petitioner therefore humbly prays, that he may be at liberty to amend his bill (*Continue as in* No. 219, *ante*).

And your petitioner will ever pray, &c.

(*f*) For the practice as to amending bills, see Dan. Pr. 329—352; and in suits by paupers, *ib.* 42. As to when an application to amend a bill should be made by motion or petition of course, and when by summons, see Dan. Pr. 340; 15 & 16 Vic. c. 80, s. 26; and for a detailed list of applications for orders to amend which may be made on motion or petition of course, either *ex parte*, or by consent, see Dan. Pr. Appx. I., II. As to the vacations, see Dan. Pr. 338, 339; Ord. V.; XXXVII. 13 (1). By an order of Court, dated the 10th Aug. 1866 (see 11 Sol. Jour. 60), the Registrars' office is, during the vacations, to be closed on Monday and Saturday in each week. As to amendment, under orders made at the hearing of a cause, see Dan. Pr. 343—345; and of a demurrer or plea, *ib.* 345, 346.

(*g*) See Dan. Pr. 336. For order in like case, see Seton, 1251, No. 1. As to the amendment of clerical errors in names, dates and sums, see Dan. Pr. 265, n. (*q*), 336; Ord. IX. 9. Counsel's signature is not necessary to amendments of this kind, if the errors are specified in the order to amend: see Dan. Pr. 266, n. (*y*), 336, n. (*g*). The errors to be corrected should be stated in the motion paper or petition. An order of course to amend a clerical error cannot, after decree, be obtained on petition of course. For order in like case on motion, see *post*, No. 221.

(*h*) For order in like case, see *Conway* v. *Roe*, M. R. 12 Dec. 1869, Rolls' Lib.

221.

Motion paper, to amend a clerical error, after decree (*i*).

Formal parts: see ante, No. 53.

on the part of the plaintiff, that he may be at liberty to amend his bill filed in this cause, by striking out the names "Charles Baddely," and substituting the name "Baddeley," as the Christian name of the plaintiff.

222.

Motion paper, to amend bill (and interrogatories), before appearance (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend his bill,

If so: and the interrogatories filed by him for the examination of the defendants in answer thereto,

as he may be advised.

No appearance has yet been entered.

223.

Petition of course, for the like (*k*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this suit against the defendants: but no appearance has yet been entered thereto.

2. Your petitioner is now advised to amend his said bill.

If so: and the interrogatories filed by him for the examination of the said defendants in answer thereto.

Your petitioner therefore humbly prays, that he may be at liberty to amend his bill,

If so: and the said interrogatories,

as he shall be advised.

And your petitioner will ever pray, &c.

224.

Motion paper, to amend bill (and interrogatories), after appearance (*l*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend [*Or*, re-amend] his bill.

Generally: as he shall be advised (*m*).

Adding parties: by adding parties as defendants, with apt words to charge them (*n*).

Amend interrogatories: and also to amend the interrogatories filed by the plaintiff for the examination of the defendants in answer to the said bill, as he shall be advised (*m*).

(*i*) *Cooper* v. *Cooper*, V. C. S., 23 Mar. 1865, Reg. Lib. A. 507. The plaintiff, in that case, was described in the title of the order, "Baddeley Cooper, in the bill called Charles Baddely Cooper, an infant," &c.

(*k*) See Dan. Pr. 336; Ord. IX. 8. For order in like case, on motion, see Seton, 1252, No. 2.

(*l*) See Dan. Pr. 336. As to when an order of course to amend will be irregular after appearance, see Dan. Pr. 337, 339, 342, 346, 518.

(*m*) For order in like case, on petition, see *Hall* v. *Urmer*, M. R., 16 June, 1870, Rolls' Lib.

(*n*) See Dan. Pr. 330, 333, 339.

No answer, or further answer, required: not requiring any answer from the defendants A. B., and C. D.

Or, from any of the defendants who have put in an answer (*o*).

Or, from any of the defendants.

Without prejudice to injunction: without prejudice to the injunction awarded in this cause (*p*).

Costs of Amendment: upon payment of 20*s.* costs to the defendant A. B.; and without costs as to the other defendants (*q*).

225.

Petition of course, for the like (*r*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this suit against the defendants: who have appeared thereto; but no answer has been put in to the said bill [*or as may be*].

2. Your petitioner is now advised to amend his bill—*If so:* and the interrogatories filed by him for the examination of the defendants in answer thereto.

Your petitioner therefore humbly prays, that he may be at liberty to amend (*Continue as in* No. 224, *ante*).

And your petitioner will ever pray, &c.

226.

Motion paper, to amend bill, pending demurrer or plea (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend his bill as he may be advised [*or as may be: see ante*, No. 224].

A demurrer [*Or*, plea] to the whole [*Or*, to part of the] bill was filed by the defendants on the ——, 187—; but it has not been set down for argument (*t*).

(*o*) See Dan. Pr. 337.

(*p*) See Dan. Pr. 349. In the interval between the service of the notice and the hearing of a motion for an injunction, an application for leave to amend should be made specially by summons: Dan. Pr. Chap. XXXVI. s. 2; Kerr, Inj. 616. For form of summons, see *post*, No. 231.

(*q*) For order in like case, on petition, see *Richardson* v. *Chambers*, M. R., 4 Dec. 1869, Rolls' Lib. As to the fixed costs payable on amendment, see Dan. Pr. 337, 349; and see Ord. XL. 7, 8.

(*r*) See notes to No. 224, *ante*.

(*s*) See Dan. Pr. 336, 510, 599; Ord. XIV. 14, 15, 17; XXXVII. 13 (3).

(*t*) If the demurrer has been set down, the application should be made by summons: Dan. Pr. 510; and so as to a plea: *ib.* 599, n. (*q*). For form of summons in such case, see *post*, No. 231. For summons for leave to amend, after plea allowed upon argument, see *post*, No. 520.

227.

Petition of course, for the like (*u*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendants: who appeared thereto.

2. On the ——, 187—, the defendants filed a demurrer [*Or*, plea] to the whole [*Or*, to part of the] bill; but the same has not been set down for argument.

3. Your petitioner is now advised to amend his bill.

Your petitioner therefore humbly prays, that he may be at liberty to amend his bill as he may be advised [*or as may be: see ante*, No. 224].

And your petitioner will ever pray, &c.

228.

Motion paper, to amend bill, and for amendments and exceptions to be answered together (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend his bill as he may be advised; and that the defendant A. B. may answer the amended bill at the time he puts in his further answer to the original bill, under the exceptions filed on the ——, 187—, and since submitted to [*Or*, allowed].

229.

Petition of course, for the like (*x*).

Title—and address to the M.R.: see ante, No. 56.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendant: who appeared thereto.

2. On the ——, 187—, the defendant filed his answer to the said bill.

3. On the ——, 187—, your petitioner filed exceptions to the said bill for insufficiency; and the defendant has submitted thereto [*Or*, and such exceptions have been allowed]; but the defendant has not put in his further answer.

4. Your petitioner is now advised to amend his bill.

Your petitioner therefore humbly prays, that he may be at liberty to amend his bill, as he may be advised; and that the defendant may answer the amended bill at the time he puts in his further answer to the original bill.

And your petitioner will ever pray, &c.

(*u*) See notes to No. 226, *ante*.

(*x*) See Dan. Pr. 340, 670, 677.

230.
Notice of motion to amend bill, without the amendment discharging a contempt (*y*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that he may be at liberty to amend his bill, as he shall be advised [*or as may be*]: without such amendment operating as a discharge of the contempt incurred by the defendant A. B. in not putting in his answer to the said bill [*or as may be*], or rendering it necessary to proceed with the process of contempt *de novo*.

231.
Notice of motion, or summons to amend bill (and interrogatories) (*z*).

Formal parts: see ante, No. 56, *or* 60.
on the part of the plaintiffs, that they may be at liberty to amend [*Or*, re-amend (*a*)] their bill

Generally: as they shall be advised (*b*).

Adding parties: by adding parties as co-plaintiffs (and defendants), with apt words to charge them, and otherwise in relation thereto, as they shall be advised.

Or, by adding the name of A. B. as a plaintiff, and otherwise as they shall be advised (*c*).

Or, by adding C. D. as a defendant, with apt words to charge him, and otherwise as they shall be advised (*d*).

Striking out a party, or particular words: by striking out the name of the above-named A. B. as a plaintiff (*e*), and inserting his name as a defendant (*f*)—without prejudice to the interrogatories already filed (*g*).

Or, by striking out the name of the defendant C. D., and otherwise in relation thereto as they shall be advised.

Or, by striking out the words "out of the jurisdiction of this honourable Court" from the title of the said bill (*h*).

(*y*) See Dan. Pr. 336, n. (*g*), 351, 434, 446; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 10.

(*z*) See Dan. Pr. 340, 342; 15 & 16 Vic. c. 80, ss. 26, 27; Ord. IX. 13—16. As to when the application should be made by special motion or summons, see Dan. Pr. 340, 342. For order, on special motion, to amend bill pending an appeal, see *Earl of Harrington* v. *Countess of Harrington*, L. C. 25 April, 1868, Reg. Lib. A. 1033. As to an application to amend, pending a demurrer, see Dan. Pr. 510; or a plea, *ib.* 599; or after a demurrer or plea allowed upon argument, *ib.* 345, 515, 606, 689; and see *ante*, No. 226, n. (*t*). For form of summons to amend, after plea allowed, see *post*, No. 520.

(*a*) *Bahre* v. *Murrieta*, M. R. at Chambers, 30 June, 1865, Reg. Lib. A. 1263.

(*b*) *Peter* v. *Nicolls*, V. C. S. at Chambers, 21 Jan. 1869, Reg. Lib. B. 84.

(*c*) *Edington* v. *Sloper*, V. C. W. at Chambers, 11 Feb. 1865, Reg. Lib. A. 447.

(*d*) See *Jennings* v. *Walker*, M. R. at Chambers, 19 Dec. 1865, Reg. Lib. A. 2394.

(*e*) *Jackson* v. *Duke of Newcastle*, M. R. 27 Jan. 1864, Reg. Lib. A. 81.

(*f*) See, as to an infant plaintiff, Dan. Pr. 70.

(*g*) *Kent* v. *Wolstenholme*, V. C. W. at Chambers, 26 June, 1865, Reg. Lib. A. 1298.

(*h*) See *Hodges* v. *Hodges*, M. R. 1 July, 1865, Reg. Lib. A. 1294.

Amend interrogatories: and also to amend the interrogatories filed by the plaintiffs for the examination of the defendants in answer to the said bill, as they shall be advised.

If so: and also deliver fresh interrogatories upon such amended bill for the examination of the defendants in answer thereto (*i*).

No answer, or further answer, required: not requiring any answer from the defendant E. F.

Or, from any of the defendants who have put in an answer (*k*).

Or, from any of the defendants (*l*).

Without prejudice to motion for injunction: without prejudice to the notice of motion for an injunction in this cause (*m*).

Without prejudice to injunction: without prejudice to the injunction awarded in this cause (*n*).

Without prejudice to notice of motion for decree: without prejudice to the plaintiffs' notice of motion for a decree (*o*).

Costs of amendment: upon payment of 20*s.* costs to the defendant A. B.; and without costs as to the other defendants (*p*).

Costs of application: and that the costs of this application may be costs in the cause (*q*).

232.

Summons to amend joint bill of husband and wife, by making it

Formal parts: see ante, No. 60.

on the part of the plaintiffs, that they may be at liberty to amend their bill in this cause by making the above-named H. I. K. (husband) a defendant, and making it the bill of complaint of F. C.,

(*i*) *Allsop* v. *Wilkes*, M. R. at Chambers, 23 Nov. 1866, Reg. Lib. A. 2402.

(*k*) See Dan. Pr. 337.

(*l*) *Clay* v. *Fenton*, M. R. at Chambers, 15 Mar. 1865, Reg. Lib. A. 471; *Spence* v. *Woolhouse*, V. C. M. at Chambers, 22 Jan. 1869, Reg. Lib. B. 71.

(*m*) *London and South-Western Ry. Co.* v. *Official Manager of the Southampton Imperial Hotel Co. Limited*, M. R. at Chambers, 19 Jan. 1869, Reg. Lib. B. 35; and *ante*, No. 224, n. (*p*).

(*n*) See Dan. Pr. 349; *ib.* Chap. XXXVI. s. 2; *Johnson* v. *Plowden*, V. C. S. at Chambers, 4 Feb. 1864, Reg. Lib. A. 158. For order to amend without prejudice to undertaking given by defendants on hearing of motion for injunction, see *Candy* v. *Arthur*, V. C. W. at Chambers, 7 Aug. 1866, Reg. Lib. A. 2155. For order, on motion, to amend bill without prejudice to notice of motion to commit for breach of injunction, see *Wood* v. *Heardern*, V. C. M. 15 Nov. 1869, Reg. Lib. B. 2668.

(*o*) See *Earl De la Warr* v. *Cavendish*, V. C. W., 22 Dec. 1865, Reg. Lib. A. 2421.

(*p*) See Dan. Pr. 337, 349; and Ord. XL 7, 8.

(*q*) See Dan. Pr. 340.

the wife of the said H. I. K., by C. A. K., of (*Residence and addition*), her next friend, and otherwise as they shall be advised; and that the costs of this application may be costs in the cause.

the bill of the wife only by her next friend (*r*).

233.

Summons to withdraw replication, and amend bill (*s*).

Formal parts: see ante, No. 60.

on the part of the plaintiffs, that they may be at liberty to withdraw the replication filed in this suit on the —— day of ——, 187—, and amend [*Or*, re-amend] their bill (*&c., as in* No. 231, *ante*).

234.

Affidavit in support of summons to amend bill (*t*).

In Chancery.

(*Full title, and reference to the record.*)

We, A. B., of (*Residence and addition*), the above-named plaintiff,

Or, one of the above-named plaintiffs,

Or, We, A. B., of, *&c.*, the next friend in this cause of the above-named plaintiffs,

and C. D., of (*Place of business*), gentleman, the solicitor in this cause for the above-named plaintiffs, severally make oath and say, as follows:

1. The counsel of the plaintiffs has advised that their bill in this cause should be amended [*Or*, re-amended], and has settled, approved, and signed the draft of the amendments proposed to be made in the said bill (*u*).

2. Such amendment is not intended for the purpose of delay or vexation; but because the same is considered to be material for the case of the plaintiffs (*u*).

3. The answer of the defendant

Or, The joint and several answer of the defendants

Or, if there are several defendants who do not join in the same answer, say: The answer of the defendant E. F., being the last of the answers required to be put in

was filed on the —— last, and was deemed [*Or*, held to be] sufficient on the ——, last [*or as may be*].

If so, add: An order of course dated the ——, 187—, for leave to amend the plaintiffs' bill has been obtained (*x*).

4. No replication has been filed in this cause; and the plaintiffs have not undertaken to reply (*x*).

(*r*) *Kelly* v. *Randell*, V. C. S. at Chambers, 16 Mar. 1865, Reg. Lib. A. 467.

(*s*) See Dan. Pr. 343; Ord. IX. 14—16. For orders in like case, see *Gouldie* v. *Hick*, M. R., 15 Mar. 1865, Reg. Lib. A. 542; *Attorney-General* v. *Bishop of Manchester*, V. C. W. at Chambers, 30 Nov. 1865, Reg. Lib. A. 2222.

(*t*) Dan. Pr. 340. As to the persons to make the affidavit, see Dan. Pr. 342; Ord. IX. 16.

(*u*) See Ord. IX. 14.

(*x*) See Dan. Pr. 339.

If the plaintiffs have filed or undertaken to file replication—or if four weeks have elapsed since the answer—or the last of the answers required to be put in—was deemed, or was held to be, sufficient, substitute for paragraph 4 *above, paragraph* 4 *below,* (*if the fact*). *In every case add paragraph* 5.

4. The plaintiffs filed replication in this suit on the ——, last. *Or,* The plaintiffs, on the ——, last, undertook to file replication in this suit.

5. For the reasons hereinafter stated the matter of the said proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the said bill, that is to say: (*Show the nature of the amendment, and how the amendment is material; and that reasonable diligence has been used* (*y*).

235. Notice of motion, by a plaintiff, for leave to amend, by making a defendant of his co-plaintiff refusing to proceed (*z*).

Formal parts: see ante, No. 55.

on the part of the plaintiff A. B., that he may be at liberty to amend the plaintiffs' bill by striking out the name of C. D. as a co-plaintiff, and making him a defendant; and that the said C. D. may be ordered to pay to the plaintiff A. B. the costs occasioned by such amendment, and also the costs of giving any security for costs which the defendants or any of them may be held entitled to in consequence of such amendment, and incidental thereto; and also the costs of and incident to this application: such costs to be taxed as between solicitor and client.

236. Summons for time to apply for an order to amend (*a*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the time allowed him to obtain an order of course to amend his bill may be enlarged to the ——, 187—; and that the costs of this application may be costs in the cause.

237. Order thereon (*a*).

Master of the Rolls [*or as may be*]
at Chambers.

(*Date, title, and reference to the record.*)

Upon the application, *&c.*, It is ordered that the time allowed the plaintiff to obtain an order to amend his bill be enlarged to the —— day of ——, 187—. And it is ordered that the costs of this application be costs in the cause.

Or, that the plaintiff A. B. pay to the defendant C. D. £——, for the costs of this application.

(*y*) See Dan. Pr. 342; Ord. IX. 15. As to an application to amend after plea allowed, see Dan. Pr. 346, 606, 689.

(*z*) See Dan. Pr. 331. As to the course, where, after decree, the solicitor of the plaintiffs ceases to practise, and one of them refuses to concur with the rest in appointing a successor, see *Butlin* v. *Arnold*, 1 H. & M. 715; Dan. Pr. 331, n. (*z*); and *post*, Chap. XXIX.

(*a*) See Dan. Pr. 342; Ord. XXXVII. 17, 18. For orders in like case, see *Pride* v. *Bubb*, M. R. at Chambers, 27 Nov. 1869, Reg. Lib. B. 3275; *North-*

238.
Summons to enlarge time to amend, under an order obtained (*b*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that the time limited by the order dated the —— 187—,
Special Order to amend; or, if no time is thereby limited—or in the case of an order of course—say: limited by the 9th Consolidated Order, rule 17,
for the applicant to amend his bill, pursuant to the said order,
Or, to the order dated the ——, 187—,
may be (further) enlarged to the ——, 187—; and that the costs of this application may be costs in the cause.

239.
Order thereon (*b*).

Formal parts: see ante, No. 237.
It is ordered that the time limited (*Continue as in* No. 238, *ante, to the end—Or substitute direction to pay costs, as in* No. 237.)

240.
Præcipe for amendment of a bill (*c*).

In Chancery.
(*Short title, and reference to the record.*)
For amending bill.
C. D., plaintiff's solicitor [*Or*, agent].
——, 187—.

241.
Notice of motion to take amended bill off the file, or

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that the plaintiff's re-amended bill may be taken off the file; or that the paragraph thereof num-

umberland Central Ry. Co. v. *Waring*, V. C. M. at Chambers, 2 Aug. 1870, Reg. Lib. B. 2351. Some of the Vice-Chancellors consider that there is no jurisdiction at Chambers to enlarge the time to obtain, or to amend under, the common order to amend: Dan. Pr. 347, n. (*f*).

(*b*) See Dan. Pr. 346, 347; Ord. IX. 17, 24; XXXIII. 11; and see last note. For orders, on summons, to enlarge time to amend, in like case, see *Peek* v. *Earl Spencer*, M. R. at Chambers, 14 Dec. 1869, Reg. Lib. B. 3104; *Lyne* v. *Drury*, V. C. M. at Chambers, 20 Dec. 1869, Reg. Lib. B. 3261; *Hereford, Hay, & Brecon Ry. Co.* v. *Rae*, V. C. B. at Chambers, 29 July, 1870, Reg. Lib. A. 2096; and without prejudice to the defendant's undertaking given on the plaintiff's motion for an injunction coming on to be heard, see *Swansea Valley Ry. Co.* v. *Budd*, V. C. W. at Chambers, 12 Jan. 1865, Reg. Lib. B. 8.

(*c*) See Dan. Pr. 348. As to when the record will be amended, and when a reprint must be filed, see Dan. Pr. 348. A fee of like amount is payable on filing a reprint, as was paid on filing the original bill, *ante*, No. 196, n. (*o*); and a fee of 10*s*. is payable on amending the record of a bill: Regul. to Ord. Sched. 4.

strike out amendments, for irregularity (*d*).

bered [14*a*] may be expunged from such re-amended bill; and that the costs of this application may be paid by the plaintiff.

242.

Another form thereof (*e*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff's amended bill may be taken off the file; or, that the amendments made in the plaintiff's bill since the order dated the ——, 187—, (*Order to amend*) may be struck out, and the record restored to the state in which it was in immediately before such amendments were made; and that the plaintiff may be ordered to pay to the defendant his costs occasioned by such amendments, and of this application.

243.

Notice of motion, for payment of defendant's costs of statements in bill abandoned by amendment (*f*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff may be ordered to pay to the said defendant his costs of this suit up to the time of filing the plaintiff's amended bill; or so much of the defendant's costs of the original bill, and of his answer thereto, and of the other proceedings thereon, as have been occasioned by the —— and —— paragraphs of the said original bill, and the relief sought with respect thereto [*Or*, as have been occasioned by the relief sought by the said original bill with respect to (*State what*)]; and also the defendant's costs of this application.

(*d*) See *Barlow* v. *McMurray*, V. C. S., 24 May, 1866, Reg. Lib. A. 1147: Law Rep. 2 Eq. 420: 12 Jur. N. S. 519: in which case the irregular amendment was directed to be expunged; and see Dan. Pr. 330, 351. For the practice, where the bill is irregularly amended, see Dan. Pr. 351, 352.

(*e*) See Dan. Pr. 351.

(*f*) See Dan. Pr. 351. For the practice as to costs, where the plaintiff amends by striking out a portion of his bill, see Dan. Pr. 351, 352.

CHAPTER VII.

PROCESS BY SERVICE OF A COPY OF THE BILL ON FORMAL DEFENDANTS, AND PROCEEDINGS BY SERVICE OF NOTICE OF THE DECREE.

SECTION I.—PROCESS BY SERVICE OF A COPY OF THE BILL ON FORMAL DEFENDANTS (*a*).

244. Motion paper, for further time to serve copy of the bill (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for (one month's) further time to serve a copy of his bill [*Or*, amended—*Or*, supplemental—bill], filed on the ——, 187—, on the defendants A. B. and C. D., under Cons. Ord. X. r. 17.

A print of the bill, and affidavit in support, accompany.

245. Motion paper, for leave to enter memorandum of service (*c*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to enter a memorandum of service on the defendant A. B. of a copy of the plaintiff's bill [*Or*, amended—*Or*, supplemental—bill], under Cons. Ord. X. r. 12.

A print of the bill, and affidavit of service, accompany.

(*a*) As to binding parties by service of a copy of the bill, see Dan. Pr. 173, 318, 353—358; Ord. X. 11—18; XL. 16; Reg. Regul. 15 Mar. 1860, r. 24; and as to serving the copy of the bill through the post office, see *Burton* v. *Shaw*, 10 L. T. N. S. 292, V. C. W.

(*b*) See Dan. Pr. 354; Ord. X. 17, 18. For order in like case, see Seton, 1243, No. 2; and for order for leave to serve, notwithstanding time expired, see *Saull* v. *Godfrey*, V. C. S., 30 Jan. 1869, Reg. Lib. B. 174. The application must be supported by affidavit explaining the cause of the delay: Dan. Pr. 354. The order enlarging the time need not be served on the defendant: *ib.* n. (*q*).

(*c*) See Dan. Pr. 355; Ord. X. 12. For orders in like case, see *Attorney-General* v. *Sittingbourne and Sheerness Railway Co.*, V. C. W., 14 Jan. 1864, Reg. Lib. A. 5; *Scott* v. *Falkner*, V. C. M. 9 May, 1870, Reg. Lib. B. 1174; and see Seton, 1244, No. 3.

246.
Affidavit in support (*d*).

Formal parts: see ante, No. 9.

1. On the —— day of —— 187—, I served the defendant A.B. with a true copy of the plaintiff's bill

Or, amended—*Or*, supplemental—bill

of complaint in this cause, by delivering such copy to, and leaving the same with, the said defendant, personally, at (*State where*).

Or, if not personally, say with what member of his family; as thus: with the wife—*Or*, son—*Or*, daughter—*Or*, servant—of the said defendant A. B., at his dwelling house or usual place of abode situate at (*State where*).

2. The said copy of the bill did not, at the time of the service thereof as aforesaid, have any indorsement thereon requiring the said defendant to appear thereto.

3. *Where an amended or re-amended bill is served, add:* The said copy of the bill had thereon, at the time of the aforesaid service thereof, a memorandum indicating that the said bill had been amended [*Or*, re-amended] on the —— day of ——, 187—, pursuant to an order dated the —— day of ——, 187—.

4. The said defendant A. B. is not an infant; and the said bill does not pray any account, payment, conveyance, or other direct relief against him; but it prays that, upon being served with a copy of the said bill, he may be bound by all the proceedings in the cause (*e*).

247.
Indorsement, on order to enter, of the entry having been made (*f*).

(*Date.*)

Memorandum of service entered, as directed within.

X. Y.,
C. R. & W.

248.
Notice of motion, by defendant served, for leave to enter appearance after time allowed (*g*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., who has been served with a copy of the plaintiff's bill [*Or*, amended—*Or*, supplemental—bill], but is not required to appear thereto, that he may be at liberty to enter a common [*Or*, special] appearance to such bill under the 10th Consolidated Order, notwithstanding the time limited thereby has expired.

(*d*) See Dan. Pr. 355; Ord. X. 8, 11—18. As to the proof required, on entering a memorandum of service, see Dan. Pr. 355. As to a misnomer of the party served, see Dan. Pr. 356.

(*e*) The statement as to the prayer does not seem to be essential, as it can be proved by a print of the bill: see Dan. Pr. 355, n. (*d*).

(*f*) See Dan. Pr. 355, 356. No fee is payable for entering the memorandum: *ib.* 357, n. (*p*).

(*g*) See Dan. Pr. 357; Ord. X. 14—16. For order in like case, see Seton, 1249, No. 5.

249. *Præcipe* for appearance, in common form (*h*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Enter an appearance for the defendant C. D., at the suit of B. A. Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance: see ante*, No. 4, *or* 7.)

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250. The like, in special form (*h*).

In Chancery.

(*Reference to the record.*)

A. v. B. } The defendant C. D. appears to the bill [*Or*, amended —*Or*, supplemental—bill], for the purpose of being served with notice of all proceedings therein. Dated (*&c., as in* No 249, *ante*).

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251. Notice of appearance (*i*).

Formal parts: see ante, No. 54.

Take notice, that I have this day entered a common [*Or*, special] appearance for the defendant A. B. to the plaintiff's bill [*Or*, amended—*Or*, supplemental—bill] herein.

(*h*) See Dan. Pr. 357. As to appearances in common or special form by parties served with a copy of the bill, see *ib.;* Ord. X. 14—16; and for the practice as to entering an appearance in common form, see Dan. Pr. 459—464.

(*i*) See Dan. Pr. 357.

Section II.—Proceedings by Service of Notice of the Decree (*k*).

252.
Notice of a decree or order (*l*).

In Chancery.

(*Title of the cause, and reference to the record, as in the decree or order.*)

Take notice, that by a decree [*Or*, an order] dated the —— day of ——, 187—, and made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], in this cause, it was (declared and) ordered as follows, that is to say: (*Set out the declaratory and ordering parts of the decree or order* (*m*).)

Dated (*&c.: Conclude as in* No. 54, *ante*).

To (*Set out the names and places of residence of the persons to be served with the notice*).

253.
Memorandum to be indorsed on the notice, in ordinary cases (*n*).

In Chancery.

(*Short title.*)

To (*Name of person on whom the notice is to be served*).

Take notice, that, from the time of the service of this notice, you will be bound by the proceedings in the above cause, in the same manner as if you had been originally made a party to the suit; and that you may, by an order of course, have liberty to attend the proceedings under the within-mentioned decree [*Or*, order]; and that you may, within one month (*o*) after the service of this notice, apply to the Court to add to the decree [*Or*, order].

254.
Summons for direction as to the mode of

Formal parts: see ante, No. 60.

on the part of the plaintiff, that notice of the decree [*Or*, order] dated the ——, 187—, which, pursuant to the Statute 15 & 16

(*k*) For the practice as to serving notice of the decree or order on persons who are not named as parties to the record, see Dan. Pr. 358—364; 15 & 16 Vic. c. 86, s. 42; Ord. VII. 5—7; XXIII. 18—20; XXXV. 16, 18, 20; XL. 28; Regul. 8 Aug. 1857, rr. 7, 8.

(*l*) See Dan. Pr. 362. A full copy of the decree or order, instead of a formal notice, may be served; but, in such case, the copy must be indorsed in like manner as a notice: Dan. Pr. 362.

(*m*) The simplest course seems to be, to set out, *verbatim*, so much of the decree or order as follows the recital of the evidence.

(*n*) See Dan. Pr. 362; 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. XXIII. 20.

(*o*) See *post*, No. 261, n. (*y*).

Vic. c. 86, s. 42, r. 8, is required to be served upon A. B., C. D., and E. F., infants, may be served upon them respectively as follows: (*State proposed mode of service; as thus:*

(1) As to the said A. B., by serving him personally at (*State where*); (2) As to the said C. D., by serving the same on his father, G. D.; And (3) as to the said E. F., by serving the same on his testamentary guardian H. L.).

And that a copy of the order to be made hereon may be served with each of the said notices.

service, in the case of infants (*p*).

255.

Affidavit in support (*q*).

Formal parts: see ante, No. 9.

1. A. B., C. D., and E. F., on whom, respectively, notice of the decree [*Or*, order] in this cause, dated the ——, 187—, is required to be served, as being respectively interested in the matters in question in this cause as (*State, shortly, how; as thus:* three of the residuary legatees of G. H., the testator therein named), are respectively infants; that is to say: the said A. B. is of the age of —— years; the said C. D. is of the age of —— years; and the said E. F. is of the age of —— years.

2. The said A. B. has no parent, testamentary guardian, or guardian appointed by this honourable Court. He is now residing at No. 400, Chancery Lane, London, under the care of Mr. W. N., law stationer, to whom he is apprenticed; and he is maintained at the expense of the said W. N. The nearest relations of the said A. B. are: (1) his paternal uncle S. B., of, *&c.;* and (2) his maternal aunt N. M., the wife of W. M., of, *&c.*

3. The said C. D. is residing with, and is under the care of his father G. D., esquire, at Esher in Surrey; and is maintained at the expense of the said G. D.

4. The said E. F. has no father. H. L., of Hampstead Heath, gentleman, is his testamentary guardian. The said E. F. is now residing at Brighton College, as a boarder; and is maintained there out of the income of his property. His nearest relations

(*p*) See Dan. Pr. 360; Ord. VII. 5; Regul. 8 Aug. 1857, r. 7. For orders in like case, see *Row* v. *Row*, V. C. W. at Chambers, 20 Dec. 1865, Reg. Lib. B. 2470; *Wells* v. *Pratt*, M. R. at Chambers, 23 June, 1868, Reg. Lib. B. 1801; and for service of infant abroad, see *O'Toole* v. *Brown*, M. R. at Chambers, 21 Dec. 1867, Reg. Lib. B. 3011; and see Seton, 1212.

(*q*) See Dan. Pr. 360; and Regul. 8 Aug. 1857, r. 7: which requires the affidavit in support to show, as far as the applicant is able:—The ages of the infants; whether they have any parents or testamentary guardians, or guardians appointed by the Court of Chancery; where, and under whose care, the infants are residing; at whose expense they are maintained; and, in case they have no father or guardian, who are their nearest relations; and that the parents, guardians, relations, or persons on whom it is proposed to serve the notice, have no interest in the matters in question, or, if they have, the nature of such interest, and that it is not adverse to the interests of the infants. The form of affidavit above given can be readily adapted to meet the circumstances of the particular case.

are: (1) his mother S. F., of, *&c.*, widow; and (2) his maternal uncle, the said H. L.

5. The said G. D., on whom it is proposed to serve notice of the said decree on behalf of the said C. D., has no interest in the matters in question in this suit.

6. The said H. L., on whom it is proposed to serve notice of the said decree on behalf of the said E. F., has an interest in the matters in question in this suit, as (*State the nature of the interest; as thus:* another of the residuary legatees of the said G. H.); but such interest is not adverse to the interest of the said E. F.

7. *Show means of knowledge.*

256.

Memorandum to be indorsed on the notice, in like case (*r*).

In Chancery.

(*Short title.*)

To (*Name of person on whom the notice is to be served*).

Take notice, that, from the time of the service of this notice, you

Or, if served on a substitute, say: the infant A. B., in the order in this cause dated the ——, 187—, (*Order to substitute service*) named,

will be bound by the proceedings in the above cause, in the same manner as if you [*Or*, the said infant] had been originally made a party to the suit; and that you [*Or*, the said infant] may, by an order of course, have liberty to attend the proceedings under the within mentioned decree [*Or*, order]; and that you [*Or*, the said infant] may, within one month after the service of this notice, apply to the Court to add to the decree [*Or*, order].

257.

Summons for direction as to the mode of service, in the case of a person of unsound mind not so found (*s*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that notice of the decree [*Or*, order] dated the ——, 187—, which, pursuant to the Statute 15 & 16 Vic. c. 86, s. 42, r. 8, is required to be served upon B. A., a person of unsound mind not so found, may be so served (*State proposed mode of service; as thus:*

by serving the same on him personally, at the dwelling-house of D. C., situate at, *&c.*

Or, on his brother C. A., of, *&c.*)

And that a copy of the order to be made hereon may be served with such notice.

(*r*) See Dan. Pr. 362; 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. XXIII. 20.

(*s*) See Dan. Pr. 360; Ord. VII. 5; Regul. 8 Aug. 1857, r. 7. For order for substituted service on the father of a person of unsound mind not so found, see *Sadler* v. *Maugham*, V. C. M. at Chambers, 3 Nov. 1869, Reg. Lib. B. 3262; and see Seton, 1212.

258.
Affidavit in support (*t*).

Formal parts: see ante, No. 9.

1. B. A., on whom notice of the decree [*Or*, order] in this cause, dated the ——, 187—, is required to be served, as being interested in the matters in question in this suit as (*State shortly how; as thus:* one of the next of kin of G. H., the intestate therein named), is a person of unsound mind; but the said B. A. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

2. The said B. A. is under the care of D. C., at the Asylum kept by him for insane persons situate at, *&c.;* and is maintained there at the expense of C. A., of, *&c.*, the brother of the said B. A.

3. The nearest relations of the said B. A. are: (1) his mother M. A., of, *&c.*, widow; (2) his said brother C. A.; and (3) his sister N., the wife of L. G., of, *&c.*

4. The said C. A., the person on whom it is proposed to serve notice of the said decree [*Or*, order] on behalf of the said B. A., has an interest in the matters in question in this suit as (*State shortly how; as thus:* another of the next of kin of the said G. H.); but such interest is not adverse to the interest of the said B. A.

5. *Show means of knowledge.*

259.
Memorandum to be indorsed on the notice, in like case (*u*).

In Chancery.

(*Short title.*)

To (*Name of person on whom the notice is to be served*).

Take notice, that, from the time of the service of this notice, you

Or, if served on a substitute, say: B. A., the person of unsound mind, in the order in this cause dated the ——, 187— (*Order to substitute service*), named

will be bound (*Continue as in* No. 256, *ante, to the end; but substitute* person of unsound mind, *for* infant).

260.
Motion paper, or summons,

Formal parts: see ante, No. 53, *or* 60.

on the part of the plaintiff, that he may serve notice of the decree

(*t*) See Dan. Pr. 360; and Regul. 8 Aug. 1857, r. 7: which requires the affidavit in support to show, as far as the applicant is able:—Where, and under whose care, the person of unsound mind is residing, and at whose expense he is maintained; who are his nearest relations; and that such relations, or persons, upon whom it is proposed to serve the notice, have no interest in the matters in question, or, if they have, the nature of such interest, and that it is not adverse to the interest of the person of unsound mind.

(*u*) See Dan. Pr. 362; 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. XXIII. 20.

for leave to serve the notice out of the jurisdiction (*x*).

[*Or*, order], dated the ——, 187—, upon A. B., at (*State where; as thus:* Paris, or elsewhere in France),

Or, in the case of substituted service, say: upon A. B., by serving the same upon (*State whom, and where; as thus:* his mother E. B., at the city of F., in the county of S., in the State of O., in the United States of America, or elsewhere in the said United States).

If the month allowed by Ord. XXIII. 18, *is deemed insufficient, add:* and that the time to be specified in the indorsement on such notice, within which the said A. B. may apply to add to the decree [*Or*, order] may be (six weeks) after such service.

261.

Affidavit in support (*y*).

Formal parts: see ante, No. 9.

1. A. B., on whom notice of the decree [*Or*, order] in this cause, dated the ——, 187—, is required to be served, as being interested in the matters in question in this suit (*State shortly how; as thus:* under the trusts of the indenture dated the ——, 18—, in the pleadings mentioned), is now residing at (*State where; as thus:* Paris, in France), out of the jurisdiction of this honourable Court. He is not an infant, nor of unsound mind [*or as may be*] (*z*).

2. *Show means of knowledge.*

262.

Affidavit of service of the notice on an adult, infant, lunatic, person *ex jur.*, or substitute (*a*).

Formal parts: see ante, No. 9.

Where a copy is served as notice: 1. On the —— of ——, 187—, I served A. B. with notice of the decree [*Or*, order] made in this cause by his lordship the Master of the Rolls [*Or*, by his honor the Vice-Chancellor ——], dated the —— of ——, 187—: which said decree [*Or*, order] is now produced and shown to me (*b*), and is marked A.: by delivering to and leaving with the said A. B.,

(*x*) See Dan. Pr. 360; 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. XXIII. 18, 20; XXXV. 18; Braithwaite's Manual, 175. For orders in like case, see *Login* v. *Princess of Coorg*, M. R. at Chambers, 19 Mar. 1861, Reg. Lib. B. 1898; *Hasluck* v. *Hasluck*, V. C. W. at Chambers, 9 June, 1863, Reg. Lib. A. 1084; *Gates* v. *Buckland*, V. C. S. at Chambers, 14 Mar. 1865, Reg. Lib. A. 480.

(*y*) See Dan. Pr. 360. For memorandum to be indorsed on the notice, see *ante*, Nos. 253, 256, 259. The time specified in the indorsement for applying to add to the decree must accord with the direction, if any, in the order permitting service abroad.

(*z*) For forms of additional statements, where the person required to be served is an infant, or *non compos mentis*, see *ante*, Nos. 255, 258.

(*a*) See Dan. Pr. 362.

(*b*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43. If not exhibited, the mandatory part must be recited: see *ante*, No. 48.

Or, if served on a substitute, say: with C. D., the person named in the order dated the —— of ——, 187—, hereinafter mentioned,

at (*State where*), a true copy of the said decree [*Or*, order].

Or, where a notice is served: 1. On the —— of ——, 187—, I served A. B. with a notice in writing of the decree [*Or*, order] made in this cause by his lordship the Master of the Rolls [*Or*, by his honor the Vice-Chancellor ——], dated the —— of ——, 187—, and of which notice the paper writing, marked A., now produced and shown to me (*c*) is a true copy

Or, if a copy is not exhibited (*d*), *say:* and which notice was in the words and figures following, that is to say; *and set out the notice verbatim*,

by delivering such notice to, and leaving the same with, the said A. B.,

Or, if served on a substitute, say: with C. D., the person named in the order dated the —— of ——, 187—, hereinafter mentioned,

at (*State where*).

In every case: 2. The copy [*Or*, The notice] served as aforesaid of the said decree [*Or*, order] had, at the time of such service, a memorandum indorsed thereon in the words following, that is to say (*Set forth a copy of the memorandum*).

Or, if the decree (*Or, order*), *or a copy of the notice, is exhibited, with a copy of the memorandum indorsed, say, after* thereon: and of which memorandum, the memorandum marked B., now produced and shown to me (*c*), and indorsed on the said exhibit marked A., is a true copy.

Where service is made under a special order: 3. At the time of the aforesaid service of the said copy [*Or*, notice] of the said decree [*Or*, order], I also served the said C. D. with the order made in this cause dated the —— of ——, 187—, now produced and shown to me (*e*), and marked C., by delivering a true copy of the said order to, and leaving the same with, the said C. D.; and I, at the same time, showed to him the said original order, duly passed and entered.

Identity of individual served: 4. A. B., hereinbefore named, is one of the residuary legatees of G. H., the testator in the proceedings in this cause named [*or as may be*] (*f*).

5. *Show means of knowledge.*

(*c*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43.

(*d*) It seems to be usual and advisable to exhibit a copy of the notice, instead of setting out its contents in the affidavit.

(*e*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43. If not exhibited, the mandatory part must be recited: see *ante*, No. 43.

(*f*) The identity of the person served with the person required to be served must be established, either by the affidavit of the person who served the notice (of course only if he is competent to swear thereto), or by some other deponent, or in some other satisfactory manner.

263.
Affidavit of service of the notice on numerous persons (*g*).

Formal parts: see ante, No. 9.

1. On the respective days mentioned in the first column of the schedule hereto, I served the several persons whose names are set forth in the second column of the said schedule, opposite to the said respective days, with a notice of the decree [*Or*, order] made in this cause by his lordship the Master of the Rolls [*Or*, by his honor the Vice-Chancellor ——], dated the —— of ——, 187—: which said decree [*Or*, order] is now produced and shown to me (*h*), and is marked A.: by delivering a true copy of the said decree [*Or*, order] to, and leaving the same with, each of the persons whose names are set forth in the third column of the said schedule, at the respective places set forth in the fourth column thereof, opposite to their said respective names (*i*).

2. Each of the said copies had, at the time of such service thereof as aforesaid, indorsed thereon a memorandum addressed to the person on or for whom respectively I so served the same, and of which memorandum the paper writing, marked B., now produced and shown to me (*h*), and indorsed on the said exhibit marked A., is a true copy, except that the said address is omitted in such exhibited copy.

3. The several persons served as aforesaid are interested in the matters in question in this suit in the manner set forth in the fifth column of the said schedule, opposite to their said respective names (*k*).

4. *Show means of knowledge.*

Where service is made under a special order, add: 5. At the time I served the said copy as aforesaid on L. J. and J. T., in the said schedule named, I served each of them with the order made in this cause dated the —— of ——, 187—, now produced and shown to me (*h*), and marked C. (*Order directing substituted service*), by delivering a true copy of the said order to, and leaving the same with, each of them the said L. J. and J. T.; and I at the same time produced and showed to each of them the said original order, duly passed and entered.

[The Schedule

(*g*) See Dan. Pr. 362.

(*h*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43.

(*i*) If a notice, instead of a copy, is served, vary the affidavit, as in No. 262, *ante*.

(*k*) See *ante*, No. 262, n. (*f*), as to establishing the identity of the parties served.

THE SCHEDULE ABOVE REFERRED TO.

Date of service.	Name of person served with notice.	Name and description of person on whom notice served.	Place of service.	Nature of interest of person served.
1870, October 20.	John Denn . .	The said John Denn, personally.	No. 500, Fleet Street, in the City of London.	As two of the residuary legatees named in the will of D. B., the testator in the proceedings in this cause named.
,, November 1.	Richard Fenn . .	George Fenn, son of the said Richard Fenn, personally.	The dwelling-house of the said Richard Fenn, situate No. 80, Lincoln's Inn Fields, in the county of Middlesex.	
,, ,, 2.	Ann Doe, Spinster . .	Lewis Jones, in the Order dated ———, 187—, named, personally.	Esher, in the County of Surrey.	As children of X. Y., deceased, another of the said residuary legatees.
,, ,, 3.	Mary Roe, Widow . .	James Thompson, in the Order dated ———, 187—, named, personally.	Hampstead, in the County of Middlesex.	

264.

Summons for special directions as to mode of service (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff:

1. That service of notice of the decree [*Or*, order] dated the ——, 187—, pursuant to the Statute 15 & 16 Vic. c. 86, s. 42, r. 8, together with a copy of the order to be made hereon, upon A. B., of, *&c.*, may be deemed good service upon C. D., E. F., and G. H.

2. That publication in the London Gazette, and in "The Times" newspaper, of notice of the said decree [*Or*, order], and of the memorandum prescribed by the 23rd of the Consolidated Orders, rule 20, in this behalf, addressed to L. M., and of a copy of the order to be made hereon, may be deemed good service of such notice on the said L. M.; and that the time within which the said L. M. may apply to add to the said decree may be —— months after the last publication of such notice.

3. That service of notice of the said decree [*Or*, order] upon S. T., by sending such notice, indorsed with the memorandum prescribed as aforesaid, through the post office, in a pre-paid letter, addressed to him at ——, may be deemed good service of such notice on the said S. T. (*l*); and that the time within which the said S. T. may apply to add to the said decree may be —— months after the service of such notice.

4. That service of notice of the said decree on W. Y. may be dispensed with.

265.

Letter enclosing notice of decree to a person directed to be served through the post office (*m*).

(*Address and date.*)

To S. T., of ——.

Sir,

In a suit of A. *v.* B., now pending in the High Court of Chancery, for the administration of the estate of W. A. late of, *&c.*, deceased [*or as may be*], the Master of the Rolls [*Or*, Vice-Chancellor ——], has, by an order dated the ——, 187—, directed notice of the decree [*Or*, order] therein, dated the —— of ——, 187—, to be transmitted to you, as being one of the next of kin of the said W. A. [*or as may be*]. I beg, therefore, as the plaintiff's solicitor, to enclose you such notice (marked A.), and also a copy of the said order dated the ——, 187— (*Order directing service*); and have to call your attention to the memorandum indorsed on the notice.

As I shall have occasion to satisfy the Judge that the notice and copy order have reached you, I shall feel obliged by your signing

(*k*) See Dan. Pr. 360. The application must be supported by affidavit. As to substituted or special service of the notice, and as to dispensing with service, see Dan. Pr. 360; Ord. XXXV. 18.

(*l*) For orders for service through the post office, see *St. John* v. *Harrison*, M. R. at Chambers, 15 Nov. 1866, Reg. Lib. B. 2269; *Lawson* v. *Halford*, M. R. at Chambers, 22 Nov. 1869, Reg. Lib. B. 3117; and see Dan. Pr. 396, 397; see also *Burton* v. *Shaw*, 10 L. T. N. S. 292, V. C. W.; and Ord. 11 Nov. 1862, r. 63.

(*m*) See Dan. Pr. 361.

and returning to me, through the post office, the acknowledgment to that effect which you will find written in the fold of the copy enclosed (marked B.) of the notice (*n*).

I am, &c.,
X. Y.

266.
Acknowledgment of the receipt of the notice (*o*).

(*Place and date.*)

I, S. T., of, *&c.*, hereby acknowledge to have received, through the post office, on the ——, 187—, a notice with an indorsement thereon, in the form or to the effect of the within written notice and of the indorsement thereon, and also a document purporting to be a copy of an order made on the —— of ——, 187—, in the within mentioned suit, directing such notice to be transmitted to me.

S. T.

267.
Affidavit of such service (*p*).

Formal parts: see ante, No. 9.

1. I have, in the manner hereinafter mentioned, served S. T., in the order made in this cause dated the —— of ——, 187— (*Order directing special mode of service*), named, with notice of the decree [*Or*, order] made in this suit by his lordship the Master of the Rolls [*Or*, his honor the Vice-Chancellor ——], dated the —— of ——, 187—.

2. On the —— of ——, 187—, I put into the post office receiving house situate No. ——, in —— street, in the (county) of ——, a letter duly addressed thus: (*Set out the address*); and with the proper postage stamp affixed thereto, as a pre-paid letter (*q*); and of which letter the paper writing marked A. now produced and shown to me (*r*) is a true copy.

3. The said letter, at the time I posted the same as aforesaid, contained a true copy, as passed and entered, of the order in this suit dated the —— of ——, 187—, now produced and shown to me (*r*), and marked B. (*Order directing special service*), and also a notice of the said decree [*Or*, order] dated the —— of ——, 187—, with a memorandum indorsed thereon addressed to the said S. T., and of which two documents the notice marked C., and memorandum indorsed thereon marked D., now respectively produced and shown to me (*r*), are true copies; and also contained the acknowledgment, marked E. (*r*), now appearing in the fold of

(*n*) It seems to be advisable, in every case, to send a form of acknowledgment for signature.

(*o*) The form assumes that the acknowledgment will be written on a copy of the notice and indorsement. Where it is not so intended, the acknowledgment should be varied in form accordingly, and made sufficiently explicit.

(*p*) See Dan. Pr. 361.

(*q*) See Ord. 11 Nov. 1862, Sched. 3, No. 27.

(*r*) Exhibit same. For form of memorandum thereof, see *ante*, No. 43.

the said notice, except that such acknowledgment was then undated and unsigned.

4. The said exhibited documents, marked C., D., and E., were received by me on the —— of ——, 187—, through the post office.

5. Under the circumstances hereinbefore stated, I verily believe that notice of the said decree [*Or*, order], with such indorsement thereon as aforesaid, and a copy of the said order of the —— of ——, 187— (*Order directing service*), were duly received by the said S. T., at ——, aforesaid, on or about the —— of ——, 187—.

268.

Motion paper, for leave to enter memorandum of service, where service irregular (*s*).

Formal parts: see ante, No. 53.

To apply on behalf of the plaintiff, that the Record and Writ Clerk may be directed to enter a memorandum of service of notice of the decree [*Or*, order] dated the ——, 187—, upon A. B., *&c.*, on the accompanying affidavit of C. D., filed ——, 187—, of such service.

269.

Præcipe for entry of a memorandum of service of notice (*t*).

In Chancery.

(*Full title of cause, and reference to the record.*)

Enter memorandum of service of notice of the decree [*Or*, order] made in this cause by his lordship the Master of the Rolls [*Or*, by his honor the Vice-Chancellor ——], dated the —— day of ——, 187—, upon the undermentioned persons, viz.:—

Name of Party served.	Date of Service.
John Denn	1870, October 20.
Richard Fenn. . . .	,, November 1.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the memorandum: see ante*, No. 4, *or* 7.)

270.

Certificate of such entry having been made (*u*).

In Chancery.

(*Name of Judge, and reference to record.*) (*Short title.*)

These are to certify that a memorandum of service of notice of the decree [*Or*, order] made in this cause by his lordship the

(*s*) See Dan. Pr. 362.

(*t*) See Braithwaite's Pr. 517.

(*u*) See Dan. Pr. 362. The certificate must bear a 4*s*. Chancery fee fund stamp: Reg. to Ord. Sched. 4; and *post*, Chap. XXXI. An office copy of

Master of the Rolls [*or as may be*], dated the —— day of ——, 187—, upon the undermentioned persons, viz.: (*Set out the names*) was duly entered on the —— day of ——, 187—, as appears by my book. Dated this —— day of ——, 187—.

X. Y.,
C. R. & W.

271.
Motion paper, for leave for an adult to attend proceedings (*x*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., of (*residence and addition*): who has been served, pursuant to the 15 & 16 Vic. c. 86, s. 42, r. 8, with notice of the decree [*Or*, order] made by the Master of the Rolls [*Or*, Vice-Chancellor ——], dated the ——, 187—: that he may be at liberty to attend the proceedings thereunder.

272.
Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*). Showeth as follows:

1. Your petitioner has been served with notice of the decree [*Or*, order] made in this cause by your lordship [*Or*, by his honor the Vice-Chancellor ——], dated the —— day of ——, 187—.

2. Your petitioner claims to be interested in the subject matter of this cause, and desires to attend the proceedings under the said decree [*Or*, order].

Your petitioner therefore humbly prays, that he may be at liberty to attend the proceedings under the said decree [*Or*, order] accordingly.

And your petitioner will ever pray, &c.

273.
Motion paper, for leave for an infant, or person of unsound mind, to attend proceedings, by

Formal parts: see ante, No. 53.

To move on behalf of A. B., an infant [*Or*, a person of unsound mind, not so found], by C. D., of (*residence and addition*), his next friend, and who has been served, pursuant to the 15 & 16 Vic. c. 86, s. 42, r. 8, with notice of the decree [*Or*, order] made by the

the affidavit of service, and any exhibits or orders connected therewith, are required to be left at the Record and Writ Clerks' office, with the *præcipe*, for examination. As to leaving a copy of the certificate at the Judge's Chambers, see Regul. 8 Aug. 1857, r. 8; and for certificate verifying such copy see *post*, Chap. XXIX.

(*x*) See Dan. Pr. 363; 15 & 16 Vic. c. 86, s. 42, r. 8. For order in like case, see *Swindell* v. *Wardle*, M. R. 17 Mar. 1866, Rolls' Lib.; and for a corporation aggregate to attend, see *Plumley* v. *Brownlow*, M. R. 18 Dec. 1869, Rolls' Lib.; and on the application of A. B., acting under the power of attorney of C. D., for the said C. D. to attend by the said A. B. as his attorney, see *Brooke* v. *Ellis*, M. R., 21 Dec. 1869, Rolls' Lib.; and see Seton, 1213, No. 3. As to leaving a copy of the order at the Judge's Chambers, see Dan. Pr. 363; Regul. 8 Aug. 1857, r. 8; and for certificate verifying such copy, see *post*, Chap. XXIX. For form of summons for leave to add to the decree, see *post*, Chap. XXIX.

his guardian (*y*).

Master of the Rolls [*Or*, Vice-Chancellor ——], dated ——, 187—, that the said C. D. may be assigned his guardian by whom he may attend the proceedings under the said decree [*Or*, order]; and that he may be at liberty to attend the said proceedings by such guardian accordingly.

An affidavit in support accompanies.

274.

Petition of course, for the like (*y*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., an infant [*Or*, a person of unsound mind, not so found], by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. Your petitioner has been served with notice of the decree [*Or*, order] made in this cause by your lordship [*Or*, by his honor the Vice-Chancellor ——], dated the ——, 187—.

2. Your petitioner claims to be interested in the subject matter of this cause, and desires to attend, by his guardian, the proceedings under the said decree [*Or*, order].

Your petitioner therefore humbly prays, that the said C. D. may be assigned (*Continue as in* No. 273, *ante, to* accordingly).

And your petitioner will ever pray, &c.

275.

Affidavit in support of motion or petition, in the case of an infant (*z*).

In Chancery.

(*Title, and reference to the record.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this cause for A. B. hereinafter named, make oath and say, as follows:

1. Pursuant to an order made in this cause dated the ——, 187— (*Order directing mode of service*), the said A. B., therein named, has been served with notice of the decree [*Or*, order] made in this cause by his lordship the Master of the Rolls [*Or*, by his honor the Vice-Chancellor ——], dated the —— of ——, 187—.

2. The said A. B. is an infant.

3. I know and am well acquainted with C. D., of (*residence and addition*), the person proposed to be assigned the guardian of the said A. B., by whom he may attend the proceedings under the said decree [*Or*, order].

4. 5. The said C. D. is (*Continue as in* No. 110, *par.* 3, *ante, to end of par.* 4).

Sworn (*&c.: ante*, No. 12).

(*y*) See Dan. Pr. 146, 159, 363; 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. VII. 6, 7. For order in like case of an infant, on petition, see *West* v. *West*, M. R., 7 Mar. 1870, Rolls' Lib.

(*z*) See Dan. Pr. 363.

276.
The like, in the case of a person of unsound mind (*a*).

In Chancery.

(*Title, and reference to the record.*)

We, E. F., of (*Place of business*), gentleman, the solicitor in this cause for A. B. hereinafter named, and B. E., of (*Continue as in* No. 127, *ante, to*) severally make oath and say:

And first I the said E. F. for myself say, as follows:

1. Pursuant to (*Continue as in par.* 1 *of* No. 275, *ante, to the end of that par.*).

2. I know and am (*Continue as in par.* 3 *of* No. 275, *ante, to the end of that par.*).

4. The said A. B. has not (*Continue as in par.* 4 *of* No. 127, *ante, to the end of that Form*).

Sworn (*&c.: ante*, No. 12).

(*a*) See Dan. Pr. 363.

CHAPTER VIII.

PROCESS TO COMPEL, AND PROCEEDINGS IN DEFAULT OF, APPEARANCE.

Section I.—Service of the Copy of the Bill (*a*).

277. *Præcipe*, on stamping or re-stamping copy bill for service (*b*).

In Chancery.

(*Reference to the record.*)

A. v. B. { Seal [*Or*, Re-seal] one copy [*Or*, —— copies] of bill for service.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party presenting the copy to be stamped: see ante*, No. 4, or 7.)

278. Indorsement on copy bill, for ordinary service (*c*).

Victoria R.

To the within named defendant A. B. [*Or*, defendants A. B., C. D., *&c.*], greeting:—

We command you (*If more than one, add:* and every of you), that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within named (*Insert plaintiff's name*); and that you observe what our said Court shall direct. Witness ourself at

(*a*) As to service of the copy of the bill in general, see Dan. Pr. 365—381; 15 & 16 Vic. c. 86, ss. 3, 6, and Sched. thereto, as amended by Ord. IX. 2; Ord. VII. 3; IX. 20, 21; X. 1. As to the service of amended and supplemental bills, and orders of revivor, see Dan. Pr. 369; Ord. IX. 20—22; and as to service of written bills, see Dan. Pr. 366; 15 & 16 Vic. c. 86, s. 6.

(*b*) See Dan. Pr. 366; Braithwaite's Pr. 31. One *præcipe* is sufficient for any number of copies. If the copy is to be stamped for service in pursuance of any special order, such order must be produced at the same time. Each copy of the bill stamped for service must bear a fee fund stamp of 5*s.* higher scale, or 1*s.* lower scale: Regul. to Ord. Sched. 4; and *post*, Chap. XXXI. A copy may be altered and re-stamped, on another *præcipe* being left, at any time before service. No fee is payable for re-stamping such copy within twelve weeks from the date of the indorsement: Dan. Pr. 366, n. (*t*).

(*c*) See Dan. Pr. 365; 15 & 16 Vic. c. 86, ss. 3, 4; and Sched. thereto, as varied by Ord. IX. 2. The indorsement need not, in any case, be printed; and it may be partly printed and partly written: Dan. Pr. 365.

Westminster, the —— day of ——, in the —— year of our reign (*d*).

NOTE.—If you fail to comply with the above directions, the plaintiff may enter an appearance for you, and you will be liable to be arrested and imprisoned, and to have a decree made against you in your absence.

Appearances are to be entered at the Record and Writ Clerks' Office, Chancery Lane, London.

279.
Indorsement on copy of the bill, for service on a corporation aggregate (*e*).

VICTORIA R.

To the within named defendants the (*Insert name of corporation, as in bill*), greeting:

We command you, that within (*Continue as in* No. 278, *to the end; but substitute* to have your lands and tenements, goods and chattels distrained upon, and other proceedings taken against you, *for* to be arrested and imprisoned).

280.
Petition for letter missive to a Peer (*f*).

Title—and address to the L. C.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:—

1. Your petitioner lately exhibited his bill of complaint in this honourable Court against the above named defendant (*Insert peer's name*).

2. The said defendant resides at (*State where*); and, being a peer of the realm, cannot be compelled to appear to the said bill by the ordinary process of this Court.

Your petitioner therefore humbly prays your lordship, that a letter missive may be directed to the said (*Peer's name*), to appear to your petitioner's said bill.

And your petitioner will ever pray, &c.

281.
Letter missive thereon (*g*).

My Lord, (*Date.*)

It appears by a petition, of which a copy is herewith sent to your lordship, that A. B. has lately exhibited his bill of complaint in the High Court of Chancery, against your lordship, and desires your lordship's appearance to such bill. Wherefore I do, at his

(*d*) The date of Her present Majesty's accession to the throne is 20th June, 1837.

(*e*) See Dan. Pr. 366; 15 & 16 Vic. c. 86, ss. 3, 4; and Sched. thereto, as varied by Ord. IX. 2. As to service in the case of a corporation aggregate, or public company, see Dan. Pr. 368.

(*f*) See Dan. Pr. 366, 369. A fee of 20*s.* higher scale, and 5*s.* lower scale, is payable in fee fund stamps on each letter missive: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. For the cases in which a letter missive must be served before an indorsed copy of the bill, see Dan. Pr. 366.

(*g*) See Dan. Pr. 366, 369; Hinde, 82.

request, according to the manner used to persons of your lordship's quality, desire your lordship to take knowledge thereof, and to give directions to those whom you employ in such matters for your lordship's appearance to such bill accordingly.

I am, *&c.*

To ——, C.

The Right Honourable ——.

282.

Indorsement on copy of the bill for service on a Peer, on non-appearance after letter missive (*h*).

VICTORIA R.

To the within named defendant (*Name of Peer*), greeting :

We command you that within (*Continue as in* No. 278, *to the end ; but substitute* to have your estate sequestered, and other proceedings taken against you, *for* to be arrested and imprisoned).

283.

Motion paper, for leave to serve wife as a *feme sole*, where husband abroad (*i*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff, that service on the defendant A. B., wife of the defendant C. B., of the plaintiff's bill

If so : and of the interrogatories filed for her examination in answer thereto

may be deemed good service on her, as if she were a *feme sole.*

An affidavit in support accompanies.

284.

Affidavit in support (*i*).

In Chancery.

(*Title, and reference to the record.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiff, make oath and say, as follows :—

1. The defendant C. B., the husband of the defendant A. B., is now residing at ——, out of the jurisdiction of this honourable Court [*or as may be*].

2. The subject matter of this suit, in so far as the same relates to the said defendants C. B., and A. his wife, arises in right of the said defendant A. B.

3. *Show means of knowledge.*

Sworn (*&c.: see ante,* No. 12).

(*h*) See Dan. Pr. 369 ; 15 & 16 Vic. c. 86, ss. 3, 4 ; and Sched. thereto, as varied by Ord. IX. 2. As to the mode of service in the case of a peer, see Dan. Pr. 367, 369.

(*i*) See Dan. Pr. 163, 368. For order in like case, see Seton, 1246, No. 9 ; and for the cases in which a married woman can be compelled to answer separately, see Dan. Pr. 163, *et seq.*, 368 ; and her separate estate be charged, *ib.* 169.

285.
Motion paper, for substituted service of the copy of the bill (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of a printed [*Or*, written] copy of his bill [*Or*, amended bill], duly indorsed,

If so: and a copy of the interrogatories filed for the examination of the defendant A. B., in answer to the said bill,

upon (*Describe the proposed substitute; as thus:* C. D., of (*residence and addition*),

Or, C. D., and E. F., members of the firm of D. & F., of (*Place of business and addition*), or upon either of them,

may be deemed good service on the defendant A. B.

A copy of the bill, and an affidavit in support, accompany.

286.
Affidavit in support (*l*).

Formal parts: see ante, No. 9.

1. The plaintiff's bill in this cause was filed on the —— of ——, 187—, against the defendant A. B.; but no appearance thereto has been entered by the said defendant.

2. *Show what efforts have been made to serve the defendant with the copy of the bill; that all practicable means of doing so have been exhausted; that the proposed substitute has been appointed by the defendant to act as his agent in the suit, or other special grounds; and how the substituted service is proposed to be effected.*

3. *Show means of knowledge.*

287.
Motion paper, for leave to serve copy of the bill (and interrogatories) abroad (*m*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve a printed [*Or*, written] copy of his bill [*Or*, amended bill], duly indorsed,

If so: and a copy of the interrogatories filed for the examination of the defendant A. B., in answer to the said bill (*n*),

upon the defendant A. B., at (*State where; as thus:* Paris, or else-

(*k*) See Dan. Pr. 373. For orders in like case, see *Henderson* v. *Campbell*, L.JJ. 11 May, 1865, Reg. Lib. A. 854; *Closson* v. *Bassano*, V. C. S. 21 July, 1870, Reg. Lib. A. 1947. For order for substituted service of bill, and for leave to serve, at same time, a notice of motion for an injunction, see *Caulfield* v. *Elliott*, V. C. S. 15 Dec. 1865, Reg. Lib. A. 2367; and see *post*, Chap. XXXVI. As to substituted service of a bill, see Dan. Pr. 370—374; 4 & 5 Will. IV. c. 82, s. 2; 15 & 16 Vic. c. 86, s. 5; Ord. X. 2; and of interrogatories founded thereon, see *post*, No. 366.

(*l*) See last note; and see statements of affidavits in like case in 12 Sim. 149; 5 Beav. 391; 3 Hare, 251, 252; 1 Phil. 521; 4 Hare, 306; 11 W. R. 611, 635, 658; 13 W. R. 704.

(*m*) See Dan. Pr. 376. For orders in like case, see *Eyre* v. *Cunliffe*, M. R. 11 Jan. 1864, Reg. Lib. A. 48; *Bacon* v. *Clarke*, V. C. S. 22 Jan. 1864, Reg. Lib. A. 76; *Swift* v. *Wenman*, V. C. J. 20 Jan. 1869, Reg. Lib. B. 38; and see Seton, 1244, No. 6. As to service abroad, see Dan. Pr. 373—378; 2 & 3 Will. IV. c. 33; 4 & 5 Will. IV. c. 82; Ord. X. 7.

(*n*) *Nelson* v. *Webster*, V. C. S. 12 May, 1870, Reg. Lib. A. 1178; and see *post*, No. 368.

where in France); and that a time be fixed (*o*) for the defendant to appear.

If interrogatories are to be served with the bill, add: and to plead, answer, or demur, or make his defence.

A copy of the bill, and an affidavit in support, accompany.

288.

Summons for the like (*p*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that he may be at liberty to serve (*Continue as in* No. 287, *ante, to* defence).

289.

Affidavit in support of motion or summons (*q*).

Formal parts: see ante, No. 9.

1. The plaintiff's bill in this suit was filed on the —— of ——, 187—, against the defendant A. B.; but no appearance thereto has been entered by the said defendant.

2. *Show in what place or country the defendant is, or may probably be found* (*r*).

3. *Show means of knowledge.*

290.

Table of times to appear and answer, ordinarily inserted by the Registrars, in orders for service of copy of the bill (and interrogatories) abroad (*s*).

Place or country.	Time to appear.			Time to answer.	
	Calendar months.	Weeks.	Days.	Calendar months.	Weeks.
America, Central	—	10	—	6	—
America, North:					
British Possessions	2	—	—	6	—
United States, Eastern	2	—	—	4	—
,, Western (on the Pacific)	6	—	—	9	—
America, South	—	10	—	6	—
States on the Pacific	5	—	—	8	—
Australasia	6	—	—	9	—
Austrian Empire	—	4	—	—	12
Belgium	—	—	14	—	6
Brazils	3	—	—	6	—
Channel Islands	—	—	10	—	5
China	6	—	—	9	—
Denmark	—	—	21	—	8
France	—	—	14	—	6
German States	—	—	21	—	8

(*o*) For a table of times, see *post*, No. 290.

(*p*) See notes to last Form. This application is made *ex parte*.

(*q*) See Dan. Pr. 376.

(*r*) Ord. X. 7 (1).

(*s*) See Dodd & Brooks' Probate Pr. 712; Ord. X. 7 (2); Dan. Pr. 377.

Place or country.	Time to appear.			Time to answer.	
	Calendar months.	Weeks.	Days.	Calendar months.	Weeks.
Greece	—	6	—	—	12
Holland	—	—	14	—	6
India	5	—	—	8	—
Indian Archipelago	6	—	—	9	—
Ionian Islands	—	6	—	—	12
Ireland	—	—	10	—	5
Isle of Man	—	—	10	—	5
Italy	—	4	—	—	12
Madeira	—	4	—	—	12
Malta	—	4	—	—	12
Mexico	—	10	—	6	—
Norway	—	4	—	—	12
Persia	5	—	—	8	—
Portugal	—	—	21	—	8
Prussia	—	—	21	—	8
Russia in Europe	—	6	—	—	12
Scotland	—	—	10	—	5
Spain	—	—	21	—	8
Sweden	—	4	—	—	12
Switzerland	—	—	21	—	8
Turkey in Asia	3	—	—	6	—
Turkey in Europe	—	6	—	—	12
West Indies	—	10	—	6	—

291. Indorsement on copy of the bill, for service abroad (*t*).

VICTORIA R.

To the within named defendant A. B., greeting:

We command you that within (*Insert time to appear as fixed by the service order*) after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within named (*Insert plaintiff's name*);

If an answer is required, and interrogatories are to be served with the bill, add: and that within (*Insert time to plead, answer, or demur, &c., as fixed by the service order*) after service of interrogatories on you, you do put in your answer to the same bill;

and that you observe what our said Court shall direct. Witness (*&c.: ante*, No. 278).

NOTE.—If you do not cause your appearance to be entered within the time limited above, the plaintiff will be at liberty to enter an appearance for you, at your expense, and

If an answer is required, and interrogatories are to be served

(*t*) See Dan. Pr. 365; Braithwaite's Pr. 29; 15 & 16 Vic. c. 86, s. 3.

with the bill, add: if you do not plead, answer, or demur to the said bill within the time limited above,

you will be subject to such process as the Court shall award, and to have such order or decree made against you as the Court shall think just, upon the plaintiff's own showing.

Appearances are to be entered at the Record and Writ Clerks' Office, Chancery Lane, London.

292.

Notice of motion to set aside, for irregularity, service of copy of the bill (*u*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the order, dated the ——, 187—, whereby it was ordered that (*State substance of the service order*), may be discharged.

If an appearance has been entered by plaintiff for defendant, add: and that the Record and Writ Clerk may be directed to expunge the appearance to the said bill which has been entered by the plaintiff for the said A. B.

If such appearance has been entered under a special order, add: and that the order dated the —— day of ——, 187—, giving leave to enter such appearance may be also discharged.

And that the plaintiff may be ordered to pay the said defendant his costs of this suit, and of this application.

293.

Affidavit in support (*x*).

Formal parts: see ante, No. 9.

1. *State what has been done as to the service; as thus:* A copy of the plaintiff's bill filed in this suit, and a copy of an order made in this suit, dated the —— of ——, 187—, directing service of such copy bill on me at (*State where*), were served on me on the —— of ——, 187—, at (*State where*).

2. *State special grounds for setting aside the service.*

3. *Show means of knowledge.*

(*u*) See Dan. Pr. 378. For order on like motion, see *Foley* v. *Maillardet*, V. C. S. 11 Jan. 1864, Reg. Lib. A. 30; and on appeal therefrom: *ib.* L. C., 29 Jan. 1864, Reg. Lib. A. 181. For the practice as to setting aside an irregular service, see Dan. Pr. 377, 378. An order of course to enter a conditional appearance must first be obtained, and an appearance entered accordingly: see Dan. Pr. 378. For the practice as to entering a conditional appearance, see Dan. Pr. 460; and see *post*, Nos. 487, 488.

(*x*) See Dan. Pr. 378.

Section II.—Proceedings where no Service of a Copy of the Bill can be effected.

294. Motion paper, for defendant to appear, under 11 Geo. IV. & 1 Will. IV. c. 36, s. 3 (*y*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that, pursuant to the 11 Geo. IV. & 1 Will. IV. c. 36, s. 3, the defendant A. B. may be directed to appear to the plaintiff's bill on or before the ——, 187— (*Usually one calendar month from motion day*). And that a copy of the order to be made hereon may, within fourteen days, be inserted in the London Gazette, and affixed to the door of the parish church of the parish (*z*) of —— (*Parish where defendant had his usual abode within thirty days next before absenting himself*), and posted up at the Royal Exchange.

A print of the bill, and affidavit in support, accompany.

---

295. Affidavit in support of the motion (*a*).

Formal parts: see ante, No. 9.

1. The plaintiff's bill in this cause was filed on the —— of ——, 187—, against the defendant A. B.

2. The time within which the defendant A. B. ought to have caused his appearance to be entered to the said bill in case a copy of the said bill had been duly served on him expired (*b*) on the —— of ——, 187—.

3. *Show that the defendant is beyond the seas, or that upon inquiry at his usual place of abode he could not be found, so as to be served with a copy of the bill or other process; and that there is just ground to believe that he is gone out of the realm, or otherwise absconded, to avoid being served with the copy of the bill or other process of the Court; and, if the defendant is beyond seas, show also that he has been in England within two years next before the filing of the bill.*

4. *Show in what parish, by name, in England, the defendant made his usual abode within thirty days next before such his absenting.*

5. *Show means of knowledge.*

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296. Motion paper, for further

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that his bill may be taken

(*y*) See Dan. Pr. 382, 443; 11 Geo. IV. & 1 Will. IV. c. 36, ss. 3, 9; 7 Will. IV. & 1 Vic. c. 45, s. 2; 15 & 16 Vic. c. 86, s. 4.

(*z*) As to extra-parochial places, see Dan. Pr. 382, n. (*r*).

(*a*) See Dan. Pr. 382.

(*b*) See 11 Geo. IV. & 1 Will IV. c. 36, s. 3.

order on default (*c*).

pro confesso against the defendant A. B. at the hearing of this cause: he not having appeared thereto pursuant to the order dated ——, 187—.

The order, and affidavit in support, accompany.

297.

Affidavit in support of the motion (*d*).

Formal parts: see ante, No. 9.

1. On the —— of ——, 187— (*i. e. within fourteen days after the order was made*), I affixed a true copy of the order made in this cause dated the —— of ——, 187—, now produced and shown to me and marked A (*Exhibit order directing notices to be affixed* (*e*)), to the door of the parish church of the parish of ——, in the said order mentioned, and left the same so affixed.

2. On the —— of ——, 187— (*i. e. within the like fourteen days*), I posted up a true copy of the said order in a public place at the Royal Exchange, in London (*f*); and left the same so posted up.

298.

Motion paper, for defendant to appear under Ord. X. 6 (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that, pursuant to Cons. Ord. X. r. 6, the defendant A. B. may be ordered to appear to the plaintiff's bill on or before the ——, 187— (*Usually one calendar month from motion day*); and that a copy of the order to be made hereon, together with a notice thereof to the effect set forth at the foot of the said rule, may be inserted in the London Gazette within fourteen days from the date of the said order; and (*State other proposed modes of publication; as thus:*

once in two several weeks, within twenty-five days from the date of the said order, in "The Times," "The Standard," and "The Oldham Chronicle" newspapers).

A print of the bill, and affidavit in support, accompany.

(*c*) See Dan. Pr. 382; 11 Geo. IV. & 1 Will. IV. c. 36, ss. 3, 9.

(*d*) See Dan. Pr. 382.

(*e*) For memorandum of exhibit, see *ante*, No. 43.

(*f*) Production of the London Gazette, containing the advertisement of the order, will be sufficient proof of publication therein. The Record and Writ Clerk's certificate of no appearance having been entered by the defendant must be produced to the Registrar.

(*g*) See Dan. Pr. 382; Ord. X. 6. For orders in like case, see *Anthony* v. *Cowper*, M. R. 10 Mar. 1864, Reg. Lib. A. 493; *Marks v. Wilson*, M. R. 15 Dec. 1865, Reg. Lib. B. 2435; *Olver* v. *Buse*, M.R. 12 Dec. 1869, Reg. Lib. B. 3045; *Crabtree* v. *Poole*, M. R. 25 July, 1870, Reg. Lib. A. 2071; and see Seton, 1248, No. 3.

299. Affidavit in support of the motion(*h*).

Formal parts: see ante, No. 9.

1. The plaintiff's bill in this suit was filed on the —— of ——, 187—, against the defendant A. B.

2. *Show that the defendant has been within the jurisdiction of the Court at some time, not more than two years before the bill was filed; and that he is beyond the seas, or that, upon inquiry at his usual place of abode (if he had any), or at any other place or places where, at the time when the bill was filed, he might probably have been met with, he could not be found, so as to be served with a copy of the bill, under the statute* 15 & 16 *Vic. c.* 86, *s.* 3; *and that, in either case, there is just ground to believe that he has gone out of the realm, or otherwise absconded, to avoid being served with such copy of the bill, or other process.*

3. *Show means of knowledge.*

---

300. Notice to appear (*i*).

Set forth a *verbatim* copy of the order to appear, and add thereto the following notice:

Notice.

A. B.—Take notice, that if you do not appear pursuant to the above order, the plaintiff may enter an appearance for you; and the Court may afterwards grant to the plaintiff such relief as he may appear to be entitled to on his own showing.

---

301. Motion paper, for further order on default (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to enter an appearance to his bill for the defendant A. B.: who has made default in appearing pursuant to the accompanying order dated ——, 187—.

(*h*) See Dan. Pr. 383; Ord. X. 6. The affidavit should follow the language of rule 6 as far as possible: Dan. Pr. 383.

(*i*) See Dan. Pr. 383; Ord. X. 6.

(*k*) See Dan. Pr. 383; Ord. X. 6. For order in like case see *Darlow* v. *Sinnock*, V. C. K. 6 Dec. 1865, Reg. Lib. A. 2283; and see Seton, 1249, No. 4. No affidavit in support is necessary: as the publication of the notice will be proved by the production of the London Gazette, and the newspapers; and the defendant's non-appearance will be proved by the Record and Writ Clerk's certificate thereof. All these documents must be left with the Registrar's Clerk on bespeaking the order. For the mode of entering an appearance, see Dan. Pr. 459, *et seq.*

Section III.—Proceedings by the Plaintiff, where Service of the Copy of the Bill has been effected (*l*).

302.

Motion paper, by plaintiff, for leave to appear for defendant (*m*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to enter an appearance to his bill for the defendant A. B.

A print of the bill, and affidavit of service (*If service was made under special order, say:* and the order dated the ——, 187—, directing such service), accompany.

303.

Summons, for the like, where bill served on defendant within the jurisdiction (*n*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that he may be at liberty to enter an appearance to his bill for the defendant A. B.

304.

Affidavit of service of copy of the bill, in support of motion or summons (*o*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served the defendant A. B. (*p*) with a printed copy of the plaintiff's bill [*Or*, amended bill] of complaint in this cause, with an indorsement on such copy in the form prescribed by the Statute and Consolidated General

(*l*) See Dan. Pr. 384—396.

(*m*) See Dan. Pr. 384, 385; 4 & 5 Will. IV. c. 82, s. 1; 15 & 16 Vic. c. 86, s. 4; Ord. X. 3, 4, 7 (4), 8. For order in like case, see *Lloyd* v. *Oliver*, V. C. M., 12 Jan. 1869, Reg. Lib. B. 14; and where service effected abroad, under an order, see *Finch* v. *Finch*, V. C. B. 29 July, 1870, Reg. Lib. B. 2076; and see Seton, 1248, No. 2. This form is applicable to an ordinary service, or service on a substitute, where the service has not been duly made, and to a service abroad. The Record and Writ Clerk's certificate of non-appearance must be produced to the Registrar.

(*n*) See Dan. Pr. 385. For orders in like case, see *Gosling* v. *Moffatt*, M. R. at Chambers, 16 Mar. 1865, Reg. Lib. A. 462; *Clayton* v. *Guy*, V. C. S. at Chambers, 24 July, 1870, Reg. Lib. A. 2013. The application by summons is made *ex parte:* Dan. Pr. 385.

(*o*) See Dan. Pr. 384. The affidavit must state when, where, and how the copy of the bill was served, and by whom such service was effected: Ord. X. 8. For affidavit of service on a peer, see *post*, No. 323. For affidavit of delivery of interrogatories to bill, see *post*, No. 380.

(*p*) Where husband and wife are joint defendants, say: "the defendants A. B. and C. his wife."

Order of this Court in that behalf (*q*), by delivering such copy, indorsed as aforesaid, to, and leaving the same

If service personal, say: with the said defendant A. B. (*r*), at (*State where*), in the (county) of ——.

Or, if service not personal, say: with (*State what member of his family; as thus:* the wife—*Or,* son—*Or,* daughter—*Or,* servant) of the said defendant A. B. (*r*), at the dwelling house or usual place of abode of the said defendant, situate at (*State where*), in the (county) of ——.

Where the defendants are a corporation aggregate, or public company, say: with E. F., the secretary [*Or,* manager, *&c.*—*Or,* with a clerk] of the said defendants, at the office of the said defendants situate at, *&c.* [*or as may be*].

In the case of an amended bill, where the defendant has appeared to the original bill by a solicitor, say: with Mr. L. M., the solicitor in this cause for the said defendant A. B., at (*State where*), in the (county) of ——.

Or, with the clerk—*Or,* servant—of Mr. L. M., the solicitor in this cause for the said defendant A. B., at the office [*Or,* address for service] of the said L. M., situate at (*State where*), in the (county) of——.

In the case of substituted service, say: with G. H., the person named in the order hereinafter mentioned, at (*State where*), in the (county) of ——.

2. The said copy of the bill, at the time of the aforesaid service thereof, appeared to me to have been duly stamped with the stamp of the Record and Writ Clerks' Office; and purported to be a copy of the bill of complaint in this cause filed in the said office on the —— day of ——, 187—.

If an amended bill is served, add: as amended on the —— day of ——, 187—, pursuant to an order dated the —— day of ——, 187—.

In the case of substituted or foreign service, add: 3. At the time of the aforesaid service of the said copy of the bill, I also served the said defendant A. B. [*Or,* the said G. H.] with an order made in this cause, dated the ——, 187—, whereby it was ordered that (*Recite so much of the order as directs the substituted or foreign service*), by delivering to, and leaving with, the said A. B. [*Or,* G. H.], a true copy of the said order; and I at the same time produced and showed to him such original order, duly passed and entered.

(*q*) Where the copy of the bill has been served on a corporation aggregate, or public company, or on a defendant abroad, say: "with an indorsement thereon in the words and figures set forth in the schedule hereto"; and schedule a copy accordingly: as the indorsement in such case is special: see *ante,* Nos. 279, 291.

(*r*) In the case of husband and wife, insert here the husband's name only.

305.

Præcipe for appearance by plaintiff for defendant (*s*).

In Chancery.

(*Reference to the record.*)

A. } Enter an appearance, at the instance of the plaintiff,
v. } for the defendant A. B., at the suit of B. A. (*Plaintiff's*
B. } *name*).

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance: see ante*, No. 4, *or* 7).

306.

Request to withdraw appearance entered by plaintiff for defendant by mistake; and consent thereto (*t*).

In Chancery.

(*Short title, and reference to the record.*)

I hereby request that you will withdraw the appearance entered by me, as solicitor [*Or*, agent] for the plaintiff, on the —— of ——, 187—, for the defendant A. B., to the plaintiff's bill in this cause: such appearance having been entered by mistake. Dated this —— day of —— 187—.

C. D., of, *&c.*,
Plaintiff's solicitor [*Or*, agent].

To the Clerk of Records and Writs.

I consent to the above.

E. F., of, *&c.*,
Solicitor [*Or*, agent] for defendant A. B.

307.

Notice of motion, or summons, for the like (*t*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that the appearance entered by him, or on his behalf, on the —— day of ——, 187—, for the defendant A. B. to the plaintiff's bill in this cause may be withdrawn: such appearance having been entered by mistake.

(*s*) See Dan. Pr. 386. This form applies to an appearance to an original, amended, or supplemental bill, or bill of revivor. Where special leave to enter the appearance has been obtained, the order authorising the appearance to be entered must be produced to the Record and Writ Clerk with the *præcipe*. Any number of defendants may be included in one *præcipe*. The following fees are payable, in fee fund stamps, on entering appearances:—If not more than three defendants, 7*s.*; if more than three, and not exceeding six defendants, 14*s.*; and the same proportion for every like number of defendants: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. In this computation, husband and wife are regarded as one person: Dan. Pr. 386, n. (*c*). The plaintiff need not give notice of having entered an appearance for a defendant: Dan. Pr. 386. As to the plaintiff's costs of entering such appearance, see Dan. Pr. 403; Ord. XL. 15; and as to a subsequent appearance by the defendant himself, see Dan. Pr. 403; Ord. X. 9.

(*t*) See Dan. Pr. 386, n. (*d*), 463. For the practice where an appearance is entered in defendant's name by mistake, see *ib.*; and *post*, Nos. 490—492.

308.
Directions of writs used in process of contempt (*u*).

ANGLESEY:—To the Sheriff of Anglesey.
BEDFORDSHIRE:—To the Sheriff of Bedfordshire (*x*).
BERKSHIRE:—To the Sheriff of Berkshire (*y*).
BERWICK-UPON-TWEED (TOWN OF):—To the Sheriff of the county of the borough and town of Berwick-upon-Tweed.
BRECONSHIRE:—To the Sheriff of Breconshire (*z*).
BRISTOL (CITY OF):—To the Sheriff of the city *and county* of Bristol (*a*).
BUCKINGHAMSHIRE:—To the Sheriff of Buckinghamshire (*b*).
CAMBRIDGESHIRE:—To the Sheriff of Cambridgeshire.
CANTERBURY (CITY OF):—To the Sheriff of the *county of the* city of Canterbury.
CARDIGANSHIRE:—To the Sheriff of Cardiganshire.
CARMARTHEN (TOWN OF):—To the Sheriff of the town and county of Carmarthen.
CARMARTHENSHIRE:—To the Sheriff of Carmarthenshire (*c*).
CARNARVONSHIRE:—To the Sheriff of Carnarvonshire.
CHESHIRE:—To the Sheriff of Cheshire.
CHESTER (CITY OF): To the Sheriff of the *county of the* city of Chester.
CINQUE PORTS:—To the Lord Warden of our Cinque Ports, or his deputy there (*d*).
CORNWALL:—To the Sheriff of Cornwall.
CORONERS;—To the Coroner of our city [*Or*, county] of —— (*e*).
COVENTRY (CITY OF):—To the Sheriff of the county of Warwick (*f*).
CUMBERLAND:—To the Sheriff of Cumberland (*g*).
DENBIGHSHIRE:—To the Sheriff of Denbighshire (*h*).
DERBYSHIRE:—To the Sheriff of Derbyshire (*i*).
DEVONSHIRE:—To the Sheriff of Devonshire (*k*).

(*u*) See Dan. Pr. 387; Braithwaite's Pr. 148—151; but see Chitty's Forms, 317, n. (*a*): in which the words printed in italic are omitted. For directions of writs to different inferior courts, see Chitty's Forms, 763, n. (*b*).
(*x*) See *Hughes* v. *Hughes*, 24 Aug. 1866, Reg. Lib. A. 2151.
(*y*) See *Edington* v. *Sloper*, 28 Jan. 1864, Reg. Lib. A. 93.
(*z*) See *Williams* v. *Games*, 1 Feb. 1869, Reg. Lib. B. 139.
(*a*) See *Gillow* v. *Brooks*, 5 Jan. 1869, Reg. Lib. A. 3.
(*b*) See *Hughes* v. *Hughes*, 13 Jan. 1866, Reg. Lib. A. 6.
(*c*) See *Knight* v. *Holden*, 13 Sept. 1866, Reg. Lib. A. 2118.
(*d*) See 18 & 19 Vic. c. 48, s. 2; Dan. Pr. 387, n. (*o*).
(*e*) As to when the writ should be directed to the coroner, see Dan. Pr. 387, n (*l*).
(*f*) See 5 & 6 Vic. c. 110, s. 1; Chitty's Forms, 317, n. (*a*).
(*g*) See *Atkinson* v. *Milner*, 6 Aug. 1866, Reg. Lib. A. 1933.
(*h*) See *Attorney-General* v. *Jones*, 9 Jan. 1864, Reg. Lib. A. 8.
(*i*) See *Smalley* v. *Marsh*, 19 Mar. 1870, Reg. Lib. B. 614.
(*k*) See *Fraser* v. *Badloff*, 1 Jan. 1869, Reg. Lib. A. 3.

DORSETSHIRE:—To the Sheriff of Dorsetshire (*l*).
DOVER CASTLE:—To the Constable of our Castle of Dover, or his deputy there.
DURHAM (COUNTY OF):—To the Sheriff of Durham.
ESSEX:—To the Sheriff of Essex (*m*).
EXETER (CITY OF):—To the Sheriff of the *county of the* city of Exeter.
FLINTSHIRE:—To the Sheriff of Flintshire.
GLAMORGANSHIRE:—To the Sheriff of Glamorganshire (*n*).
GLOUCESTER (CITY OF):—To the Sheriff of the *county of the* city of Gloucester.
GLOUCESTERSHIRE:—To the Sheriff of Gloucestershire (*o*).
HAMPSHIRE:—To the Sheriff of Hampshire (*p*).
HAVERFORDWEST (TOWN OF):—To the Sheriff of the county of the town of Haverfordwest (*q*).
HEREFORDSHIRE:—To the Sheriff of Herefordshire.
HERTFORDSHIRE:—To the Sheriff of Hertfordshire (*r*).
HOLLOWAY PRISON:—To the Keeper of our Prison called The City of London Prison, at Holloway.
HUNTINGDONSHIRE:—To the Sheriff of Huntingdonshire.
ISLE OF ELY:—To the Sheriff of Cambridgeshire.
ISLE OF WIGHT:—To the Sheriff of Hampshire.
KENT:—To the Sheriff of Kent (*s*).
KINGSTON-UPON-HULL (TOWN OF):—To the Sheriff of the town and county of Kingston-upon-Hull (*t*).
LANCASHIRE:—To the Sheriff of Lancashire.
LEICESTERSHIRE:—To the Sheriff of Leicestershire (*u*).
LICHFIELD (CITY OF):—To the Sheriff of the city of Lichfield, and the county of the same city.
LINCOLN (CITY OF):—To the Sheriff of the *county of the* city of Lincoln.
LINCOLNSHIRE:—To the Sheriff of Lincolnshire (*x*).
LONDON:—To the Sheriffs of London (*y*).

(*l*) See *Scott* v. *Amey*, 20 Nov. 1866, Reg. Lib. B. 2224.

(*m*) See *Bank of Hindustan, China, and Japan, Limited*, 6 Jan. 1869, Reg. Lib. A. 8.

(*n*) See *British Equitable Assurance Co.* v. *Vale of Neath Railway*, 4 Oct. 1866, Reg. Lib. A. 2164.

(*o*) See *Jones* v. *Cooke*, 27 Feb. 1864, Reg. Lib. A. 318.

(*p*) See *Franks* v. *Lloyd*, 28 July, 1870, Reg. Lib. A. 2006.

(*q*) *Quære*, "To the Sheriff of the town and county of Haverfordwest:" see Chitty's Forms, 317, n. (*a*).

(*r*) See *Hare* v. *Roebuck*, 13 Aug. 1866, Reg. Lib. A. 2066.

(*s*) See *Gurnell* v. *Upton*, 11 Sept. 1866, Reg. Lib. A. 2111.

(*t*) See *Tadman* v. *Smith*, 9 May, 1866, Reg. Lib. B. 872.

(*u*) See *Smedley* v. *Smedley*, 1 Feb. 1869, Reg. Lib. B. 139.

(*x*) See *Hanslip* v. *Norwich and Spalding Railway*, 11 Feb. 1864, Reg. Lib. A. 209.

(*y*) See *McKenna* v. *Temple*, 7 Jan. 1869, Reg. Lib. A. 2.

MERIONETHSHIRE:—To the Sheriff of Merionethshire (*z*).
MIDDLESEX:—To the Sheriff of Middlesex (*a*).
MONMOUTHSHIRE:—To the Sheriff of Monmouthshire.
MONTGOMERYSHIRE:—To the Sheriff of Montgomeryshire.
NEWCASTLE-UPON-TYNE (TOWN OF):—To the Sheriff of *the town and county of the town of* Newcastle-upon-Tyne (*b*).
NEWGATE:—To the Keeper of our gaol of Newgate, or his deputy there.
NORFOLK:—To the Sheriff of Norfolk (*c*).
NORTHAMPTON:—To the Mayor, Bailiffs, and Burgesses of Northampton.
NORTHAMPTONSHIRE:—To the Sheriff of Northamptonshire (*d*).
NORTHUMBERLAND:—To the Sheriff of Northumberland (*e*).
NORWICH (CITY OF):—To the Sheriff of the *county of the* city of Norwich.
NOTTINGHAM (TOWN OF):—To the Sheriff of the town and county of Nottingham.
NOTTINGHAMSHIRE:—To the Sheriff of Nottinghamshire (*f*).
OXFORD (CITY OF) or OXFORDSHIRE:—To the Sheriff of Oxfordshire (*g*).
PEMBROKESHIRE:—To the Sheriff of Pembrokeshire.
POOLE (TOWN OF):—To the Sheriff of the town and county of Poole.
PORTSMOUTH:—To the Mayor, Aldermen, and Burgesses of our borough of Portsmouth, in the county of Southampton.
PRISON:—To the Keeper of our Prison [*Or*, Gaol] of ——.
RADNORSHIRE:—To the Sheriff of Radnorshire.
RUTLANDSHIRE:—To the Sheriff of Rutlandshire.
SHROPSHIRE:—To the Sheriff of Shropshire (*h*).
SOMERSETSHIRE:—To the Sheriff of Somersetshire (*i*).
SOUTHAMPTON (TOWN OF):—To the Sheriff of the town and county of Southampton.
SOUTHAMPTON (COUNTY OF):—To the Sheriff of Hampshire.
SOUTHWARK (BOROUGH OF):—To the Sheriff of Surrey.
STAFFORDSHIRE:—To the Sheriff of Staffordshire (*k*).

(*z*) See *Tweedie* v. *Phelps*, 5 May, 1866, Reg. Lib. B. 842.
(*a*) See *Easton* v. *Watson*, 25 Jan. 1864, Reg. Lib. A. 26.
(*b*) See *Brandling* v. *Plummer*, 23 Aug. 1866, Reg. Lib. A. 2146.
(*c*) See *Hills* v. *Reynolds*, 5 Dec. 1866, Reg. Lib. A. 2507.
(*d*) See *Cooke* v. *Lovell*, 8 Feb. 1864, Reg. Lib. A. 183.
(*e*) See *Grainger* v. *Wright*, 29 Nov. 1865, Reg. Lib. A. 2203.
(*f*) See *Shepherd* v. *Allen*, 4 Sept. 1866, Reg. Lib. B. 2054.
(*g*) See *May* v. *Davenport*, 1 April, 1870, Reg. Lib. B. 758; and see *Granger* v. *Taunton*, 3 Bing. N. S. 64; Chitty's Forms, 317, n. (*a*).
(*h*) See *Leighton* v. *Shrewsbury and N. W. Railway Co.*, 6 Dec. 1866, Reg. Lib. B. 2407.
(*i*) See *Marsh* v. *Mogg*, 21 May, 1866, Reg. Lib. B. 899.
(*k*) See *Marchant* v. *Blewitt*, 20 Sept. 1866, Reg. Lib. B. 2069.

SUFFOLK:—To the Sheriff of Suffolk (*l*).
SURREY:—To the Sheriff of Surrey (*m*).
SUSSEX:—To the Sheriff of Sussex (*n*).
WARWICKSHIRE:—To the Sheriff of Warwickshire (*o*).
WESTMORELAND:—To the Sheriff of Westmoreland.
WHITECROSS STREET PRISON:—To the Keeper of our prison called Whitecross Street Prison, or his deputy there.
WILTSHIRE:—To the Sheriff of Wiltshire.
WORCESTER (CITY OF):—To the Sheriff of the *county of the* city of Worcester.
WORCESTERSHIRE:—To the Sheriff of Worcestershire (*p*).
YORK (CITY OF):—To the Sheriff of the *county of the* city of York.
YORKSHIRE:—To the Sheriff of Yorkshire (*q*).

309.

Directions of writs issued into a county palatine (*r*).

To our Chancellor of our county palatine of Lancaster (*s*),
Or, To our Chancellor of our county palatine of Durham (*t*),
Or, To our Chancellor of our duchy and county palatine of Lancaster,
or his deputy there, greeting.

We command you, that by our writ under your seal of our aforesaid county, duly issued, you command the Sheriff of our aforesaid county, *&c.*

310.

General return days of writs of attachment (*u*).

HILARY TERM:

1. In eight days after Saint Hilary next ensuing (*x*).
   In eight days next ensuing after Saint Hilary (*y*).

(*l*) See *Hart* v. *Cuthbert*, 27 Feb. 1864, Reg. Lib. A. 329.
(*m*) See *Howard* v. *Crosse*, 12 July, 1865, Reg. Lib. A. 1368.
(*n*) See *Troup* v. *Ricardo*, 13 Dec. 1866, Reg. Lib. B. 2489.
(*o*) See *Manton* v. *Manton*, 23 Dec. 1869, Reg. Lib. B. 3029.
(*p*) See *Hughes* v. *Saunders*, 2 Oct. 1866, Reg. Lib. A. 2166.
(*q*) See *Birdsall* v. *Bradley*, 22 Jan. 1864, Reg. Lib. A. 48.
(*r*) See Dan. Pr. 387.
(*s*) See *Smith* v. *Pover*, 6 Jan. 1865, Reg. Lib. B. 3.
(*t*) See *Simpson* v. *Greg*, 24 June, 1870, Reg. Lib. B. 1615.
(*u*) As to these general return days, and when they must or may be adopted, see Dan. Pr. 387, 388.
(*x*) The return ending in (*x*) is to be used when the writ is tested before the date of the anniversary specified: see Braithwaite's Pr. 153, n. (*a*).
(*y*) The return ending in (*y*) is to be used when the writ is tested on or after the date of the anniversary specified; but so that the return will expire before the term: Braithwaite's Pr. 153, n. (*b*).

2. In fifteen days after Saint Hilary next ensuing (*z*).
   In fifteen days next ensuing after Saint Hilary (*a*).
3. On the morrow of the Purification of the Blessed Virgin Mary next ensuing (*z*).
4. In eight days after the Purification of the Blessed Virgin Mary next ensuing (*z*).
   In eight days next ensuing after the Purification of the Blessed Virgin Mary (*a*).

EASTER TERM:—

1. In fifteen days after Easter next ensuing (*z*).
   In fifteen days next ensuing after Easter (*a*).
2. From the day of Easter next ensuing in three weeks (*z*).
   From the day of Easter in three weeks next ensuing (*a*).
3. From the day of Easter next ensuing in one month (*z*).
   From the day of Easter in one month next ensuing (*a*).
4. From the day of Easter next ensuing in five weeks (*z*).
   From the day of Easter in five weeks next ensuing (*a*).
5. On the morrow of the Ascension of our Lord next ensuing (*z*).

TRINITY TERM:

1. On the morrow of the Holy Trinity next ensuing (*z*).
2. In eight days after the Holy Trinity next ensuing (*z*).
   In eight days next ensuing after the Holy Trinity (*a*).
3. In fifteen days after the Holy Trinity next ensuing (*z*).
   In fifteen days next ensuing after the Holy Trinity (*a*).
4. From the day of the Holy Trinity next ensuing in three weeks (*z*).
   From the day of the Holy Trinity in three weeks next ensuing (*a*).

MICHAELMAS TERM:

1. On the morrow of All Souls next ensuing (*z*).
2. On the morrow of Saint Martin next ensuing (*z*).
3. In eight days after Saint Martin next ensuing (*z*).
   In eight days next ensuing after Saint Martin (*a*).

311.
Special return days of writs of attachment (*b*).

IMMEDIATELY:—immediately after the receipt of this writ.

DAY CERTAIN:—on the —— day of —— next ensuing.

(*z*) See n. (*x*), *supra*.

(*a*) See n. (*y*), *supra*.

(*b*) As to these special return days, and when they may be used, see Dan. Pr. 388.

312.

General form of *præcipe* for an attachment (*c*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal an attachment directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], against A. B., for (*State nature of contempt; as thus:* not appearing at the suit of C. A., plaintiff).

Returnable in eight days after St. Hilary next ensuing [*Or*, immediately after the receipt of this writ—*or as may be: see ante*, Nos. 310, 311].

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4 *or* 7.)

313.

Writ of attachment (*d*).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], greeting:

We command you to attach A. B., so as to have him before us in our Court of Chancery in eight days after Saint Hilary next ensuing [*Or*, immediately after the receipt of this writ—*or as may be: see ante*, Nos. 310, 311], wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he, as it is alleged, hath committed against us, as also such other matters as shall be then and there laid to his charge; and further to perform and abide such order as our said Court shall make in this behalf; and hereof fail not, and bring this writ with you. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign (*e*).

ROMILLY, M. R.

(*c*) Every *Præcipe* for an attachment must be made out in duplicate, and entered with the entering clerks, in the Registrars' office, before the writ is sealed: Dan. Pr. 389. For forms of *præcipe* in particular cases, see *Index*, ATTACHMENT; see also Braithwaite's Pr. 161, *et seq.*

(*d*) See Dan. Pr. 388. The form of the writ of attachment is in all cases the same; but it must bear an indorsement, stating the particular nature of the contempt in respect of which it is issued: Dan. Pr. 389. The writ must be either written or printed on parchment; and should have a left-hand margin of sufficient width to admit of the stamp, and the official seal: Dan. Pr. 388, n. (*y*). The writ must be stamped with a Chancery fee fund stamp of 5*s.*: *ib.*; Regul. to Ord. Sched. 4; and *post*, Chap. XXXI. The names of three, but not more, persons can be inserted in one writ; and the writ must be tested on the day on which it is issued: Dan. Pr. 389. As to the costs of an attachment, see Dan. Pr. 395; and as to the mode of prosecuting a contempt by attachment, see *ib.* 387—396.

(*e*) See *ante*, No. 278, n. (*d*).

314. General form of indorsement on an attachment (*f*).

By the Court.

For (*State nature of contempt; as thus:* not appearing at the suit of C. A., plaintiff).

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

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315. Motion paper, for sheriff to return an attachment (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309] do forthwith return the writ of attachment issued against the defendant A. B. [*or as may be*], for his contempt in (*State nature of contempt; as thus:* not answering the plaintiff's bill), and returnable on the (*Insert return day of writ*).

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316. Petition of course, for the like (*g*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. On the —— day of ——, 187—, a writ of attachment, directed to the sheriff of ——, was issued, at the instance of your petitioner, against the defendant A. B. [*or as may be*], for his contempt in (*State nature of contempt; as thus:* not answering your petitioner's bill in this cause).

2. The said sheriff has neglected to return the said writ.

Your petitioner therefore humbly prays, that the said sheriff may be ordered forthwith to return the said writ.

And your petitioner will ever pray, &c.

---

317. Motion paper, for order *nisi*, for sheriff's committal, on default in making return (*h*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the sheriff of —— may be ordered, in six days after personal notice of the order to be made hereon, to return the writ of attachment mentioned in the order dated the ——, 187—; or, in default thereof, stand committed to the City of London Prison at Holloway (*i*).

The order, and an affidavit of service thereof, accompany.

(*f*) For forms of indorsement in particular cases, see *Index*, ATTACHMENT; and see Braithwaite's Pr. 159, *et seq.*

(*g*) See Dan. Pr. 394. For order in like case on motion, see Seton, 1230, No. 1; and on petition, see *Webster* v. *Hartmont*, M. R. 19 July, 1870, Rolls' Lib. As to modes of compelling a return by the sheriff, see Dan. Pr. 394; and by the chancellor or sheriff of a county palatine: *ib.* 394, 395. As to the form of the return, see Dan. Pr. 395.

(*h*) See Dan. Pr. 394. For order in like case, see *Hilton* v. *Cutts*, V. C. S. 26 Nov. 1866, Reg. Lib. A. 2468; and see Seton, 1230, No. 2.

(*i*) See Dan. Pr. 415, n. (*h*).

318.

Affidavit in support of motion (*k*).

Formal parts: see ante, No. 9.

1. On the (*Prove service of former order: see ante*, No. 48).

2. The said sheriff has not yet returned the said writ: as I know from (*Show means of knowledge*).

319.

Motion paper, to make such order absolute (*l*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the order *nisi* dated the ——, 187—, directing the sheriff of —— to return the writ of attachment therein mentioned, may be made absolute.

The order, and an affidavit of service thereof, accompany.

320.

Affidavit in support (*m*).

Formal parts: see ante, No. 9.

1. On the (*Prove personal service of the order nisi, on the sheriff: see ante*, No. 48).

2. The said sheriff has not yet returned the said writ: as I know from (*Show means of knowledge*).

321.

Attachment, for want of appearance, in ordinary cases (*n*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 312—314, *ante*.

(*k*) See Dan. Pr. 390, n. (*o*), 394.

(*l*) *Ibid.*, 394. For order in like case, see Seton, 1230, No. 3.

(*m*) See Dan. Pr. 394.

(*n*) *Ibid.*, 386, 396. As to the entry of the *præcipe*, see *ante*, No. 312, n. (*c*). For the forms in cases of particular defendants, see *post*, Nos. 322, *et seq.* A special order is now requisite to authorize an attachment to be issued for want of appearance: Ord. X. 10; Dan. Pr. 386; and the practice is virtually abolished: *ib.* 386, 396. The order must be produced at the Record and Writ Clerk's office, before the writ will be sealed.

Section IV.—Against particular Defendants (*o*).

1. *Peers, and Members of the House of Commons* (*p*).

322.
Præcipe for appearance by plaintiff for defendant (*q*).

The same as No. 305, *ante*.

323.
Affidavit in support, in the case of a peer defendant (*q*).

Formal parts: see ante, No. 9.

1. On the —— of ——, 187—, I served the defendant (*Insert name of peer defendant, as in the bill*) with the three following documents, that is to say: (1) a printed copy of the plaintiff's bill [*Or*, amended bill] of complaint in this cause; (2) a true copy of the petition preferred in this cause on the —— of ——, 187—, by the plaintiff to the Lord High Chancellor, praying that (*State prayer; as thus:* his lordship's letter missive directed to the said (*Peer's name*) desiring him to appear to the petitioner's bill); and (3) the letter missive of the said Lord High Chancellor, dated the ——, 187—, addressed to the said (*Peer's name*), whereby (*State substance of letter missive; as thus:* after referring to the said petition and bill, the said (*Peer's name*) was desired to take knowledge thereof, and to give directions to those he employed in such matters for his appearance to the said bill accordingly).

2. I so served the said several documents by delivering the said copy of the bill, copy of the petition, and letter missive to, and leaving the same with, the said defendant (*Peer's name*), at (*State where*), in the (county) of ——.

Or, with the (*State what member of the family; as:* wife —*Or*, son—*Or*, daughter—*Or*, servant) of the said defendant (*Peer's name*), at his dwelling house, or usual place of abode, situate at (*State where*), in the (county) of ——.

3. The said copy of the bill, when so served as aforesaid, had no indorsement thereon.

4. On the —— day of ——, 187—, I served the said defendant [*Peer's name*] with a printed copy of the plaintiff's said bill [*Or*, amended bill] of complaint, with an indorsement on such copy in the form prescribed by the Statute and Consolidated General Order of this Court in that behalf, by delivering such printed copy, indorsed as aforesaid, to, and leaving the same with, the said defendant (*&c., as in par.* 2).

5. Each of the said copies of the bill, at the time of the service thereof respectively, as aforesaid, appeared to me to have been duly stamped with (*&c.: Continue as in* No. 304, *par.* 2, *ante, to the end of that par.*).

(*o*) See Dan. Pr. 396—403.
(*p*) *Ibid.*, 397, 398.
(*q*) *Ibid.*, 397.

324.
Affidavit in support, where defendant is an M.P. (*s*).

The same as *ante*, No. 304, pars. 1, 2.

325.
Motion paper, for a sequestration *nisi* (*t*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a sequestration *nisi* against the defendant A.B., for not appearing to the plaintiff's (*If so:* amended) bill.

A print of the bill, and an affidavit in support of the application, accompany.

326.
Affidavit in support of motion (*s*).

The same as No. 323, *ante*, as to a Peer; and as No. 304, pars. 1, 2, *ante*, as to an M. P.

327.
Motion paper, for substituted service of the order *nisi* (*u*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of the order dated ——, 187—, for a sequestration *nisi* against the defendant A. B., for not appearing to the plaintiff's (*If so:* amended) bill, upon (*State proposed mode of service: see ante*, No. 285), may be deemed good service on the defendant A. B.

The order, and an affidavit in support, accompany.

328.
Motion paper, for a sequestration absolute (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the order dated ——, 187—, for a sequestration *nisi* against the defendant A. B., for not appearing to the plaintiff's (*If so:* amended) bill, may be made absolute.

The order, and an affidavit of service thereof, accompany (*y*).

329.
Affidavit in support of motion (*x*).

The same as No. 48, or 51, *ante*.

(*s*) See Dan. Pr. 397.

(*t*) *Ibid.* As to sequestration against a peer or M.P. for want of appearance, see Dan. Pr. 397, 398.

(*u*) See Dan. Pr. 398. The application must be supported by affidavit of the special grounds for substituted service: see *ante*, No. 286. As to substituted service of a bill, see *ante*, No. 285, n. (*k*).

(*x*) See Dan. Pr. 397.

(*y*) The Record and Writ Clerk's certificate of no appearance, and Registrar's certificate of no cause shown, must also be produced in Court, or to the Registrar.

330.
Præcipe for a sequestration (*z*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a commission of sequestration against A. B., for (*State nature of contempt; as thus:* not appearing at the suit of C. A., plaintiff): directed to (*Insert the commissioners' names*), commissioners.

Order dated —— day of ——, 187— (*Order absolute for sequestration to issue*).

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

331.
Writ of sequestration (*a*).

Victoria, (*&c.: see ante*, No. 313).

To (*Insert the names of not less than four commissioners* (*b*)), greeting:

Whereas, upon motion made unto us in our Court of Chancery on the —— day of ——, now instant [*Or*, last], by counsel for the plaintiff, in a cause wherein A. B. is plaintiff, and C. D. is defendant, it was alleged that (*Recite the whole of the order for the sequestration; but substitute* "our said Court," *for* "this Court," *and* "our said Court did order," *for* "this Court doth order," *or*, "it was ordered," *and the like*): Know ye therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give unto you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said (*Insert name of contemnor*), and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estate whatsoever; and therefore we command you, any three or two of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estate of the said (*contemnor*), and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said (*contemnor*) shall (*State act to be done, as in the order*) clear his contempt, and our said Court make other order to the contrary. Witness (*&c.: Conclude as in ante*, No. 313).

(*z*) See Dan. Pr. 398, 399, 402.

(*a*) *Ibid.*; Braithwaite's Pr. 241; Hinde, 136. The writ must be engrossed on parchment, and bear a 20*s.* fee fund stamp: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.; Dan. Pr. 402, n. (*k*). For form of the writ where, on a decree or order being disobeyed, the writ issues as of course, see *post*, Chap. XXVI.

(*b*) See Dan. Pr. 402. It is not essential that the commissioners should be professional persons: they are nominated by the party on whose behalf the writ is issued: *ib.*, n. (*i*).

332.
Indorsement thereon (*c*).

In Chancery.

A.
v.
B.

Commission of Sequestration.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

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2. *Corporation aggregate* (*d*).

333.
Præcipe for appearance by plaintiff, for the defendants (*e*).

The same as No. 305, *ante*.

334.
Affidavit in support (*e*).

The same as No. 304, *ante*.

335.
Præcipe for writ of *distringas* (*f*).

In Chancery.

(*Reference to the record.*)

A. } Seal a *distringas* against the D. C., for (*State nature of*
v. } *contempt; as thus:* not appearing at the suit of A. B.,
B. } plaintiff).

Returnable immediately [*or as may be*].

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

336.
Writ of *distringas* (*g*).

Victoria, (*&c.: see ante*, No. 313).

To the Sheriff of (*See ante*, Nos. 308, 309), greeting:

We command you to make a distress upon all the lands and tenements, goods and chattels, of (*Name of corporation*), within your bailiwick, so as neither they the said (*corporation*), nor any other person or persons for them, may lay his or their hands thereon, until our Court of Chancery shall make other order to

(*c*) See Dan. Pr. 399, 402.

(*d*) *Ibid.*, 401, 402.

(*e*) *Ibid.*, 401.

(*f*) *Ibid.*, 402. As to entering the *præcipe*, see *ante*, No. 312, n. (*c*); and as to the necessity of a motion for leave to issue the writ, see Dan. Pr. 401, n. (*x*); Ord. X. 10.

(*g*) See Dan. Pr. 402; Braithwaite's Pr. 193; Hinde, 142. Every writ of *distringas* must bear a *5s.* fee fund stamp: see Dan. Pr. 402. n. (*c*); Regul. to Ord. Sched. 4; and *post*, Chap. XXXI.

the contrary; and in the meantime you are to answer to us for the said goods and chattels, rents and profits of the said lands, so that the said (*corporation*) may be compelled to appear before us in our said Court of Chancery on (*Insert the return: see ante*, *Nos.* 310, 311 (*h*)), wheresoever it shall then be, there to answer to us as well touching a contempt which they, as it is alleged, have committed against us, as also such other matters as shall be then and there laid to their charge, and further to perform and abide such order as our said Court shall make in this behalf; and hereof fail not, and bring this writ with you. Witness (*&c.*: *Conclude as in ante*, No. 313).

337.
Indorsement thereon (*h*).

By the Court.

For (*State nature of contempt; as thus:* not appearing at the suit of A. B., plaintiff).

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

338.
Alias distringas (*i*).

Præcipe: The same as No. 335, *ante;* but say: "Seal an *alias distringas*"

The writ: The same as No. 336, *ante:* but after "command you," say: "as we have before commanded you,"

Indorsement: The same as No. 337, *ante.*

339.
Pluries distringas (*i*).

Præcipe: The same as No. 335, *ante;* but say: "Seal a *pluries distringas*"

The writ: The same as No. 336, *ante;* but after "command you," say: "as oftentimes we have commanded you,"

Indorsement: The same as No. 337, *ante.*

340.
Motion paper, for a sequestration *nisi* (*h*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for an order *nisi* for a sequestration against the defendants the D. C., for not appearing to the plaintiff's bill.

(*h*) See Dan. Pr. 402.

(*i*) *Ibid.;* Braithwaite's Pr. 193. The *distringas*, with the sheriff's return thereto, must be filed, or produced to the Record and Writ Clerk: Dan. Pr. 402.

341.
Motion paper, for a sequestration absolute (*l*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the order dated the ——, 187—, for a sequestration *nisi* against the defendants the D. C., for not appearing to the plaintiff's bill, may be made absolute.

A print of the bill, and the order and an affidavit of service thereof, accompany.

342.
Affidavit in support (*l*).

The same as No. 48, *ante*.

343.
Writ of sequestration thereon (*m*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 330—332, *ante*.

344.
Return *nulla bona* thereon (*n*).

To the Right Honourable the Lord High Chancellor of Great Britain.

By virtue of the within commission, we do certify to your lordship, that we have made diligent search and inquiry after the real estate, and goods, chattels, and personal estate, of the within-named (*Insert contemnors' names*), but cannot find that they are possessed of any real or personal estate that we can sequester and take into our hands, as by the within commission we are commanded.

Witness our hands the —— day of ——, 187—.

A. B.
C. D. } Commissioners.

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3. *Infants* (*o*).

345.
Notice of motion by plaintiff, that a guardian may be assigned (*p*).

The same as No. 118, *ante*.

346.
Affidavit in support (*p*).

The same as No. 119, or 120, *ante*.

(*l*) See Dan. Pr. 402.

(*m*) *Ibid.*; Braithwaite's Pr. 241, 242.

(*n*) Dan. Pr. 402; Braithwaite's Pr. 291. The return is indorsed on the writ of sequestration: *ib.*

(*o*) See Dan. Pr. 399.

(*p*) See *ante*, No. 118, nn. (*u*), (*v*).

4. *Idiots, Lunatics, and Persons of Unsound or Weak Mind* (*q*).

347. Notice of motion by plaintiff, that a guardian may be assigned(*r*).

The same as No. 134, *ante*.

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348. Affidavit in support (*r*).

The same as No. 135, or 136, *ante*.

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5. *Married Women* (*s*).

349. *Præcipe* for appearance by plaintiff, for a married woman, where joint defendant with husband (*t*).

The same as No. 305, *ante*.

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350. Affidavit in support (*t*).

Formal parts: see ante, No. 9.

1. 2. On the (*Prove service on the husband of the copy of the bill: see ante*, No. 304, *pars.* 1, 2, *as varied by nn.* (*p*), (*r*), *thereto*).

3. No order has been obtained by the said defendants A. B. and C. his wife, or either of them, to defend this suit separately from the other of them: as I know from (*Show means of knowledge*).

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351. Notice of motion, by plaintiff, for leave to issue attachment against husband in like case (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that he may be at liberty to issue an attachment against the defendant A. B., for want of the appearance of his wife C. B. to the plaintiff's bill.

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352. Affidavit in support (*s*).

The same as No. 350, *ante*.

(*q*) See Dan. Pr. 399.
(*r*) See *ante*, No. 134, n. (*l*).
(*s*) See Dan. Pr. 401.
(*t*) *Ibid.*; Ord. X. 4.

353.
Attachment thereon (*x*).

Præcipe and Indorsement: The same as Nos. 312, 314, *ante;* but describe the contempt as: "for want of appearance of the defendant C. B., wife of the defendant A. B., at the suit of C. A., plaintiff."

The writ: The same as No. 313, *ante.*

354.
Præcipe for appearance by plaintiff, for a married woman sued separately (*y*).

The same as No. 305, *ante.*

355.
Affidavit in support (*y*).

Formal parts: see ante, No. 9.

1. 2. 3. On the (*Prove service on the wife of the copy of the bill, and of the order for leave to serve her therewith as a feme sole: see* No. 304, *pars.* 1, 2, 3).

356.
Notice of motion, for leave to issue attachment against wife, for not appearing to husband's bill (*x*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that he may be at liberty to issue an attachment against his wife, the defendant C. B., for not appearing to his bill.

357.
Affidavit in support (*x*).

The same as No. 304, *ante.*

358.
Attachment thereon (*x*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 312—314, *ante.*

(*x*) See Dan. Pr. 401.

(*y*) See Dan. Pr. 163, 368, 401. For forms of motion paper for leave to serve wife as a *feme sole,* and affidavit in support, see *ante,* Nos. 283, 284.

CHAPTER IX.

INTERROGATORIES FOR THE EXAMINATION OF THE DEFENDANTS IN ANSWER TO THE BILL (*a*).

359. Model form of interrogatories (*b*).

In Chancery.

(*Reference to the record.*)

Between John Lee, ... Plaintiff.

and

James Styles, and Henry Jones, ... Defendants (*c*).

Interrogatories for the examination of the above-named defendants (*d*), in answer to the plaintiff's bill of complaint (*e*).

1. Does not the defendant Henry Jones claim to have some charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned?

(*a*) As to these interrogatories, see Dan. Pr. 404—410; 15 & 16 Vic. c. 86, ss. 10, 12; Ord. X. 7; XI. The interrogatories may be filed with the bill: Dan. Pr. 404, n. (*b*). As to interrogatories to bills, see 2 Van Hey. 491—493; Whitworth, Eq. Pl. 632, 633; and for forms, see Lewis, Eq. Drafting, 332—337; and *post*, Chap. XLVI.

(*b*) Ord. XI. 1, provides, that the interrogatories may be in a form similar to the form set out in Schedule B. thereto, with such variations as the nature and circumstances of each particular case may require. The form so scheduled is that above set forth. For model form of bill on which these interrogatories are founded, see *ante*, No. 154; and for the model form of answer thereto, see *post*, No. 531. As to the contents of the interrogatories to an original or amended bill, see Dan. Pr. 407—409. As to filing a second set of interrogatories, see Dan. Pr. 409. The interrogatories must be written on paper of the same description and size as that on which bills are printed: Dan. Pr. 406; Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. Dates and sums may be expressed by figures: Dan. Pr. 406, n. (*x*); and no fee is payable for filing interrogatories: *ib.* n. (*u*).

(*c*) The title of the interrogatories must be the same as that of the bill at the time the interrogatories are filed: see Dan. Pr. 406.

(*d*) If not all, name the particular defendant or defendants who are required to answer the interrogatories.

(*e*) Or, amended [*Or*, re-amended] bill of complaint.

2. What are the particulars of such charge, if any, the date, nature, and short effect of the security, and what is due thereon ?

3. Are there, or is there, any other mortgages or mortgage, charges or charge, incumbrances or incumbrance, in any and what manner affecting the aforesaid premises, or any part thereof ?

4. Set forth the particulars of such mortgages or mortgage, charges or charge, incumbrances or incumbrance ; the date, nature, and short effect of the security ; what is now due thereon ; and who is or are entitled thereto respectively ; and when, and by whom, and in what manner, every such mortgage, charge, or incumbrance was created ?

The defendant James Styles is required to answer all these interrogatories (*g*).

The defendant Henry Jones is required to answer the interrogatories numbered 1 and 2 (*g*).

Y. Y.

(*Name of Counsel* (*h*).)

360.

Indorsement on interrogatories, and each copy for service (*i*).

The same as No. 4, or 7, *ante*.

361.

Præcipe for stamping copies for service (*k*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal (*l*) one copy [*Or*, two, *&c.*, copies] of interrogatories for delivery [*Or*, service].

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party presenting the copy for sealing : see ante*, No. 4, *or* 7.)

(*g*) Vary this note, according to the fact.

(*h*) See, as to counsel's name, Dan. Pr. 406, n. (*q*).

(*i*) See Dan. Pr. 378, 379, 407; Ord. III. 2, 5, and *ante*, Nos. 3—8, and notes thereto.

(*k*) See Dan. Pr. 406. As to the preparation, authentication, and service of the copies, see Dan. Pr. 406, 407. The copy for service on any defendant should only contain the interrogatories which such defendant is required to answer: Dan. Pr. 406; Ord. XI. 4. Each copy to be sealed for service must have a Chancery fee fund stamp of 5*s.* higher scale, or 1*s.* lower scale, impressed thereon or affixed thereto: Dan. Pr. 406, n. (*z*); Regul. to Ord. Sched. 4; *post*, Chap. XXXI. One *præcipe* is sufficient for any number of copies sealed at the same time, in the same cause: Braithwaite's Pr. 37. The copies for service may be written on brief paper, or on paper of the same description and size as that on which bills are printed: as to which, see *ante*, No. 195.

(*l*) Where a copy requires to be restamped for service, say "Re-seal."

362.
Summons for time to file and deliver interrogatories (*m*).

Formal parts: *see ante*, No. 60.
on the part of the plaintiff, that the time limited by the 11th of the Consolidated Orders for the plaintiff to file and deliver interrogatories for the examination of the defendant A.B., in answer to the plaintiff's bill [*Or*, amended bill], may be extended to the —— day of ——, 187— ; and that the costs of this application may be costs in the cause.

363.
Summons for time to deliver interrogatories (*n*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that the time limited by the 11th of the Consolidated Orders for the plaintiff to deliver to the defendant A. B., or to his solicitor, a copy of the interrogatories filed for the examination of the said defendant in answer to the plaintiff's bill [*Or*, amended bill], may be extended to the —— day of ——, 187— ; and that the costs of this application may be costs in the cause.

364.
Notice of motion, or summons, for leave to file and deliver interrogatories, where time expired (*o*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff, that notwithstanding the time limited by the 11th of the Consolidated Orders has expired, the plaintiff may be at liberty, within —— days, to file and deliver interrogatories for the examination of the defendant A. B., in answer to the plaintiff's bill [*Or*, amended bill] ; and that the costs of this application may be costs in the cause.

365.
Summons for leave to deliver interrogatories, though time expired (*p*).

Formal parts : see ante, No. 60.
on the part of the plaintiff, that a copy of the interrogatories filed by the plaintiff for the examination of the defendant A. B. in answer to the plaintiff's bill may be sealed by the Clerk of Records and Writs for service on the said defendant, notwithstanding that eight days have expired since the appearance of the said defendant to the said bill ; and that the plaintiff may be at liberty to deliver the copy so sealed to the said defendant, or his solicitor.

(*m*) See Dan. Pr. 405; Ord. XXXVII. 17. For orders in like case, see *Nicholas* v. *Cowper*, V. C. J. at Chambers, 14 Jan. 1869, Reg. Lib. B. 32; *Macfarlane* v. *Hoffman*, M. R. at Chambers, 21 Jan. 1869, Reg. Lib. B. 76; *Clarke* v. *Clarke*, V. C. M. at Chambers, 1 Aug. 1870, Reg. Lib. A. 2121 ; and see Seton, 1243, No. 3. As to the time allowed to file interrogatories, see Dan. Pr. 404 ; 15 & 16 Vic. c. 86, s. 12 ; Ord. XI. 2.

(*n*) See Dan. Pr. 405; Ord. XXXVII. 17. For orders in like case, see *Burton* v. *Prance*, M. R. at Chambers, 18 Mar. 1865, Reg. Lib. A. 480 ; *Sieber* v. *Sieber*, V. C. K. at Chambers, for V. C. S., 31 Jan. 1865, Reg. Lib. B. 11 ; *Brierly* v. *Hussey*, V. C. B. at Chambers, 22 July, 1870, Reg. Lib. A. 1982.

(*o*) See Dan. Pr. 405. For orders in like case, see *Carrington* v. *Nuttall*, M. R. at Chambers, 5 Jan. 1869, Reg. Lib. A. 5; *Peek* v. *Larson*, V. C. J. at Chambers, 29 April, 1870, Reg. Lib. A. 1031.

(*p*) *Bell* v. *Bacon*, M. R. at Chambers, 13 Jan. 1864, Reg. Lib. A. 204.

366.

Motion paper, for substituted service of copy interrogatories (*q*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of a copy of the interrogatories filed for the examination of the defendant A. B., in answer to the plaintiff's bill [*Or*, amended bill] upon (*Continue as in* No. 285, *ante, to* accompany).

367.

Affidavit in support (*r*).

Formal parts: see ante, No. 9.

1. On the (*Prove service of the copy of the bill: see ante*, No. 304).

2. *The same as par.* 2, *of* No. 286, *ante: substituting* "*interrogatories*," *for* "*bill*."

3. *Show means of knowledge.*

368.

Motion paper, for leave to serve copy interrogatories abroad (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve a copy of the interrogatories filed by him for the examination of the defendant A. B., in answer to the plaintiff's bill [*Or*, amended bill], upon the defendant A. B., at (*State where; as thus:* Paris, or elsewhere in France); and that a time may be fixed (*t*) for the defendant to plead, answer, or demur, or make his defence.

A copy of the bill, and affidavit in support, accompany.

369.

Summons for the like (*u*).

Formal parts: see ante, No. 60.

on the part of the plaintiff that he may be at liberty to serve (*Continue as in* No. 368, *ante, to* defence).

370.

Affidavit in support of motion or summons (*x*).

Formal parts: see ante, No. 9.

1. On the (*Prove service of the copy of the bill: see ante*, No. 304).

2. *Show in what place or country the defendant is, or may probably be found* (*y*).

3. *Show means of knowledge.*

(*q*) Dan. Pr. 405. As to substituted service of interrogatories, see Dan. Pr. 405, 406; and see *ante*, No. 285, n. (*k*). One application, embracing service of the copies of the bill and interrogatories, is usually made: see *ante*, No. 285.

(*r*) See Dan. Pr. 406.

(*s*) *Ibid.*, 405. As to service abroad, see Dan. Pr. 405; and *ante*, No. 287, n. (*m*). As the copies of the bill and interrogatories may be served together, one application embracing both objects is ordinarily made: see Dan. Pr. 376, 405; and *ante*, No. 287.

(*t*) For a table of times, see *ante*, No. 290.

(*u*) See Dan. Pr. 405. The application is made *ex parte*.

(*x*) See Dan. Pr. 405; and *ante*, No. 289.

(*y*) See Ord. X. 7 (1).

371.
Notice of motion, or summons, for leave to file interrogatories to original and amended bill, against a defendant who answered before amendment (*z*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff, that he may be at liberty to file interrogatories for the examination of the defendant A. B., in answer to the plaintiff's original and amended bill, notwithstanding the said defendant has put in an answer to the original bill.

372.
Notice of motion, to take off the file interrogatories irregularly filed to amended bill (*a*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that the interrogatories filed in this cause on the —— day of ——, by the plaintiff, for the examination of the said defendant, may be ordered to be taken off the file of this Court: with costs to be paid by the plaintiff to the said defendant.

373.
Motion paper, for leave to amend interrogatories, generally (*b*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, for leave to amend the interrogatories filed by him for the examination of the defendants A. B., and C. D., in answer to the plaintiff's bill [*Or*, amended bill], as he shall be advised.

No answer to the interrogatories has yet been filed.

374.
Petition of course, for the like (*c*).

Title—and address to the M. R.: see ante, No. 56.
The humble petition of the plaintiff.
Showeth as follows:
1. Your petitioner lately filed his bill in this cause against the defendants thereto; and on the —— day of ——, 187—, he filed interrogatories for the examination of the defendants A. B., and

(*z*) See Dan. Pr. 408.

(*a*) For order in like case, and extending the time for the plaintiff to file other interrogatories, see *Drake* v. *Symes*, V. C. W. 22 May, 1860, Reg. Lib. A. 948; Affd. 30 May, 1860, Reg. Lib. A. 1032: 2 De G. F. & J. 81; and see Dan. Pr. 408.

(*b*) See Dan. Pr. 409. For order in like case, see Seton, 1252, No. 2. For forms of motion paper to amend bill and interrogatories, see *ante*, Nos. 222, 224. For the practice as to amending the interrogatories filed, or filing a new engrossment, under an order to amend, see Dan. Pr. 410; and as to re-stamping copies for service, *ib.* For form of *præcipe* on re-stamping copies, see *ante*, No. 361.

(*c*) For order in like case, see *Casson* v. *Cuffe*, M. R. 29 June, 1870, Rolls' Lib. For forms of petition of course for leave to amend bill and interrogatories, see *ante*, Nos. 223, 225.

C. D., in answer to such bill; but no answer to such interrogatories has been filed.

2. Your petitioner is now advised to amend the said interrogatories.

Your petitioner therefore humbly prays, that he may be at liberty to amend the said interrogatories as he shall be advised.

And your petitioner will ever pray, &c.

375.

Summons, for leave to amend interrogatories (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that he may be at liberty to amend the interrogatories filed by him for the examination of the defendants A. B., and C. D., in answer to the plaintiff's bill [*Or*, amended bill], as he shall be advised; and that the costs of this application may be costs in the cause.

376.

Motion paper, for leave to amend interrogatories, by waiving answer as to one or more of the defendants (*d*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to amend the interrogatories filed by him for the examination of the defendants A. B., C. D., and E. F., in answer to the plaintiff's bill [*Or*, amended bill], by striking out so much of the heading thereof, and foot note thereto, as requires an answer from the defendants A. B., and C. D.

377.

Petition of course, for the like (*d*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill [*Or*, amended bill] in this cause against the defendants A. B., C. D., and E. F.; and on the —— day of ——, 187—, he also filed interrogatories for their examination in answer to the said bill; but no answer thereto has been filed by the defendants A. B., and C. D.

2. Your petitioner is now desirous to waive an answer to the said interrogatories from the defendants A. B., and C. D.

Your petitioner therefore humbly prays, that he may be at liberty to amend the said interrogatories, by striking out the names of the said A. B., and C. D., in the heading thereof, and so much of the

(*c*) See Dan. Pr. 410. For order in like case, see *Thomas* v. *Lewis*, V. C. S. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2399. As to when a summons is necessary, see Dan. Pr. 410. For form of summons to amend bill and interrogatories, see *ante*, No. 231.

(*d*) See Dan. Pr. 410. For order in like case, see *Arcedeckne* v. *Howard*, M.R, 19 July, 1870, Rolls' Lib. As to the course, where the plaintiff desires to waive an answer to his interrogatories, see Dan. Pr. 409, 410.

note at the foot thereof as requires an answer from the said A. B. and C. D.

And your petitioner will ever pray, &c.

378.

Motion paper, for leave to take interrogatories off the file (*e*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff, that the interrogatories filed by him for the examination of the defendant A. B. in answer to the plaintiff's bill [*Or*, amended bill] may be taken off the file.

No answer to the interrogatories has been filed.

(*e*) See Dan. Pr. 410. For order, on special motion, directing interrogatories to amended bill to be taken off the file, with costs, see *Worms* v. *Smith*, V. C. J., 16 Dec. 1869, Reg. Lib. B. 3122.

CHAPTER X.

PROCESS TO COMPEL, AND PROCEEDINGS IN DEFAULT OF ANSWER.

SECTION I.—AGAINST DEFENDANTS NOT PRIVILEGED, NOR SUBJECT TO DISABILITY (*a*).

1. *Attachment.*

379.
Attachment for want of answer (*b*).

Præcipe and Indorsement: The same as Nos. 312, 314, *ante;* but describe the contempt as: For not answering at the suit of C. A., plaintiff (*c*).

The writ: The same as No. 313, *ante.*

380.
Affidavit of delivery of copy interrogatories in support (*d*).

Formal parts: see ante, No. 9.

On defendant: 1. On the —— day of ——, 187—, I served the defendant A. B. (*e*) with a copy of certain interrogatories for the examination of the said defendant, by delivering such copy to, and leaving the same.

(*a*) See Dan. Pr. 411—420. For a table of process for want of answer, see Seton, 1267.

(*b*) See Dan. Pr. 412. For attachment in like case, see *Attorney-General* v. *Jones,* 9 Jan. 1864, Reg. Lib. A. 8; *Holland* v. *Dickinson,* 25 Jan. 1864, Reg. Lib. A. 46; and for the practice as to preparing, issuing, executing, bailing, and enforcing the return of an attachment, see Dan. Pr. 386—396; and see *ante,* Nos. 308—321, and notes thereto. In *Brearey* v. *Green,* 22 Jan. 1864, Reg. Lib. A. 48, an attachment was issued against the defendant R. G. "for not leaving with the Clerk of Records and Writs, pursuant to the 3rd rule of the General Order of this Court dated 6 March, 1860, a printed copy of the answer of the said R. G., filed on the 16th January, 1864, in a cause wherein," &c.; and see *post,* No. 602.

(*c*) As to the entry of the *præcipe,* see Dan. Pr. 389; and see *ante,* No. 312, n. (*c*).

(*d*) See Dan. Pr. 412. Where no appearance has been entered, an affidavit of service of the bill, as well as of the interrogatories, will be necessary, before the attachment can issue: Dan. Pr. 412, n. (*g*). In such a case, the evidence of the two services should, where practicable, be combined in one affidavit. For affidavit of service of bill, see *ante,* No. 304.

(*e*) Where husband and wife are joint defendants, say: "the defendants A. B., and C., his wife."

If service personal, say: with the said defendant A. B. (*f*), at (*State where*), in the (county) of ——.

Or, if service not personal, say: with (*State what member of his family; as thus:* the wife—*Or,* son—*Or,* daughter—*Or,* servant) of the said defendant A. B. (*f*), at the dwelling house, or usual place of abode, of the said defendant, situate at (*State where*), in the (county) of ——.

Where the defendants are a corporation aggregate, or public company, say: with E. F., the secretary [*Or,* manager, *&c.*—*Or,* with a clerk] of the said defendants, at the office of the said defendants situate at, *&c.* [*or as may be*].

In the case of substituted service, say: with G. H., the person named in the order hereinafter mentioned, at (*State where*), in the (county) of ——.

On defendant's solicitor: 1. On the —— day of ——, 187—, I served Mr. C. D., the solicitor in this cause for the defendant A. B., with a copy of certain interrogatories for the examination of the said defendant, by delivering such copy to, and leaving the same

If service personal, say: with the said C. D., at (*State where*), in the (county) of ——.

Or, if service not personal, say: with the clerk [*Or,* servant] of the said C. D., at the office [*Or,* address for service] of the said C. D., situate at (*State where*), in the (county) of ——.

In all cases: 2. The said copy of the interrogatories, at the time I served the same as aforesaid, appeared to me to have been duly stamped and marked as an office copy at the Record and Writ Clerks' office,

If of all the interrogatories, add: and purported to be a copy of the interrogatories filed in this cause on the —— day of ——, 187—, for the examination of the said defendant A. B. [*or as may be, according to the heading of the interrogatories*], in answer to the plaintiff's bill of complaint—*And, if of amended interrogatories, add:* as such interrogatories were amended on the —— day of ——, 187—, pursuant to an order dated the —— day of ——, 187—.

Or, if not of all the interrogatories, say: and purported to be a copy of such of the interrogatories filed (*Continue as in last preceding clause to the end, and add:*) as the said defendant A. B. was required to answer.

In the case of substituted service, or service out of the jurisdiction, add: 3. At the time of the service aforesaid of the said copy of the interrogatories, I also served the said defendant A. B. [*Or,* the said G. H.] with an order (*Continue as in par.* 3 *of* No. 304, *ante, to the end*).

If the time to answer has been extended, show that the extended time has expired (*g*)*; as thus:* 4. By an order dated the —— day

(*f*) Where husband and wife are joint defendants, insert here the husband's name only.

(*g*) See Dan. Pr. 412, n. (*g*).

of ——, 187—, the said defendant had (one month's) further time to plead, answer or demur, not demurring alone, to the said bill [*or as may be*]; but such enlarged time has expired (*h*); and no further time has been allowed [*or as may be*].

381.

Motion paper, for leave to issue attachment, before time to answer has expired (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to issue an attachment, returnable forthwith [*or as may be*], against the defendant A. B., for want of his answer to the plaintiff's bill, notwithstanding his time to answer has not expired.

A print of the bill, and an affidavit in support, accompany.

382.

Affidavit in support (*k*).

Formal parts: see ante, No. 9.

1. On the (*Prove service of the copies of the bill and interrogatories: see ante*, Nos. 304, 380).

2. *State grounds for believing that the defendant means to abscond before answering.*

3. *Show means of knowledge.*

383.

Notice of motion to take bill *pro confesso*, at the hearing (*m*).

2. *Where Sheriff returns "cepi corpus" to an attachment* (*l*).

The same as No. 470, *post.*

384.

Motion paper, for the messenger to apprehend the defendant (*n*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the messenger (*o*) may apprehend the defendant A. B., and bring him to the bar: the sheriff having returned *cepi corpus* to an attachment for want of answer.

The attachment, and return thereto, accompany.

(*h*) This may be proved by production of the order, or an office copy of it, instead of an affidavit: see Dan. Pr. 412, n. (*g*).

(*i*) See Dan. Pr. 412. As to when this application may be made, see *ib.*; Ord. XII. 1.

(*k*) See Dan. Pr. 412. The application must also be supported by the Record and Writ Clerk's certificate of an appearance having been entered by the plaintiff for the defendant: *ib.*

(*l*) See Dan. Pr. 413, 414. The Sheriff's return in this case ordinarily runs thus: "I have attached the within named A.B., as within I am commanded: whose body I have ready.—The answer of C. D., Sheriff": Braithwaite's Pr. 272.

(*m*) See *post*, No. 470, n. (*c*).

(*n*) See Dan. Pr. 413; Ord. XII. 2. For order in like case, see Seton, 1260, No. 2. The order is delivered by the Registrar to the messenger: Dan. Pr. 413.

(*o*) If the office of messenger is vacant, say "Serjeant-at-Arms": see Dan. Pr. 413.

385.
Warrant to messenger, on order to apprehend defendant (*p*).

Whereas by an order bearing date the —— day of ——, 187—, made in a certain cause wherein B. A. is plaintiff, and A. B. is defendant, It was ordered that (*Set out mandatory part of order for the messenger*): These are, therefore, in pursuance of the said order, to will and require you forthwith, upon receipt hereof, to make diligent search and inquiry after the said A. B.; and, wheresoever you shall find him, to arrest and apprehend him, and bring him to the bar of this Court, to answer his contempt in the said order mentioned: willing and requiring all and singular mayors, sheriffs, justices of the peace, bailiffs, constables, jailors, headboroughs, and all other Her Majesty's officers and loving subjects, to be aiding in the execution of the premises, as they tender Her Majesty's service, and will answer the contrary at their peril; and this shall be your warrant. Dated this —— day of ——, 187—.

——, C.

To X. Y., esq., the messenger attending the High Court of Chancery, or his deputy.

386.
Return by the messenger (*q*).

In Chancery.

To the Right Honourable, the Lord High Chancellor of Great Britain.

May it please your lordship: Whereas by an order bearing date the —— day of ——, 187—, in a cause wherein B. A. is plaintiff, and A. B. is defendant, it was ordered that (*Recite the mandatory part of the order for the messenger*):

These are humbly to certify to your lordship, that, in pursuance of the said order, and your lordship's warrant, I have taken the body of the aforesaid defendant A. B. as therein commanded [*Or, where defendant is not apprehended:* I have made diligent search after the said A. B., but he doth so abscond and secrete himself that he cannot be found to be apprehended]: this being the —— day of ——, 187—.

Y. X.,
Deputy messenger attending the High Court of Chancery.

387.
Motion paper, to turn defendant over to prison, on being brought up by the messenger (*r*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff: on the defendant A. B. being brought to the bar by the messenger, for not answering the plaintiff's bill: that he be turned over to the City of London Prison, at Holloway.

(*p*) See Dan. Pr. 413. The warrant is procured by the messenger himself from the Lord Chancellor: *ib.* As to the duties of the messenger, see 2nd Rep. Eng. & Ir. Com., Appx. 121.

(*q*) See Dan. Pr. 413. As to the proceedings, when the messenger returns that defendant is in custody on other process, or *non est inventus*, see Dan. Pr. 413, 414; Seton, 1261, No. 3; 1262, No. 9.

(*r*) See Dan. Pr. 414. For order in like case, see *Jones* v. *Adamson*, M. R.

388.
Motion paper, for a *habeas* thereupon, preparatory to taking the bill *pro confesso* (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a *habeas*, directed to the Keeper of the City of London Prison at Holloway, to bring the defendant A. B. to the bar, for not answering the plaintiff's bill, preparatory to taking the bill *pro confesso* at the hearing.

The order, dated ——, 187—, turning over the defendant, and the keeper's certificate of custody, accompany.

389.
Petition of course, for the like (*s*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. *Recite order to turn over; as thus:* By an order dated the —— day of ——, 187—, it was ordered that the defendant A. B. should be turned over to the City of London Prison at Holloway, and remain there until he should fully answer your petitioner's bill, clear his contempt, and this Court make other order to the contrary.

2. Pursuant to the said order, the said defendant has been turned over to the said prison, and remains there; and he still persists in his said contempt.

Your petitioner therefore humbly prays, that a writ of *habeas* may issue, directed (*Continue as in* No. 388, *ante*, *to* hearing).

And your petitioner will ever pray, &c.

390.
Præcipe for the writ (*t*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a writ of *habeas corpus*, directed to the Keeper of the City of London Prison at Holloway [*or as may be*], to bring the defendant A. B. before (*State whom*), on the —— day of ——, 187— (*Insert return day* (*u*)).

Order (*to issue the writ*) dated —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

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21 Dec. 1863, Reg. Lib. A. 2282; and see Seton, 1262, No. 10; 1264, No. 15. Upon this order being made, the custody of the defendant is transferred from the messenger to the tipstaff of the Court: by whom he is conveyed to prison. As to the duties of the tipstaff, see 2nd Rep. Eng. & Ir. Com., Appx. 123.

(*s*) See Dan. Pr. 415; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 2. For order in like case, see *Jones* v. *Adamson*, M. R. 26 Jan. 1864, Reg. Lib. A. 103; and see Seton, 1263, No. 11.

(*t*) Braithwaite's Pr. 223; and see Dan. Pr. 414. The order to issue the writ must be produced at the time the writ is sealed: *ib.*

(*u*) The writ must be made returnable on a day certain; and it is desirable that such day should be named in the order authorising the writ to be issued. Where issued to bring up a defendant taken upon an attachment for want of

391.
The writ (*y*).

Victoria (*&c.: ante*, No. 313).
To the Keeper of the City of London Prison at Holloway [*or as may be*], greeting:
We command you that you do, on ——, the —— day of —— (*z*), bring before us in our Court of Chancery, wheresoever it shall then be, the body of A. B., by whatsoever name or addition of name he is known or called, who is detained *in our said prison*, in your custody, *together with an account of the cause or causes of his being taken into and detained in custody* (*a*), to perform and abide such order as our said Court shall make in this behalf; and hereof fail not, and bring this writ with you. Witness (*&c.: Conclude as in ante*, No. 313).

392.
Indorsement thereon (*b*).

By the Lord High Chancellor of Great Britain.
At the instance of (*Insert name of the party on whose behalf the order for the habeas was obtained*).
(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

393.
Motion paper, to remand defendant, and that bill be taken *pro confesso* (*c*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff: on the defendant A. B. being brought up by *habeas* for his contempt in not answering the plaintiff's bill: that he be remanded, and the bill be taken *pro confesso* at the hearing of this cause.

394.
Direction for a renewed *habeas* to issue (*d*).

Let another *habeas* issue, returnable on the —— day of ——, 187—, at —— o'clock in the ——noon.
A. B., Registrar,
——, 187—.

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answer, the *habeas* is generally made returnable on a motion day, whether in or out of term; but if the plaintiff is limited in time, another day may be fixed: Dan. Pr. 414; Braithwaite's Pr. 225. As to the time allowed to bring up the defendant under the writ, see Dan. Pr. 413, 414; Ord. XII. 3.

(*y*) Braithwaite's Pr. 222; and see Dan. Pr. 414. The writ must bear a 20s. fee fund stamp: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

(*z*) As to the return day, see *ante*, No. 390, n. (*u*).

(*a*) Where the writ is directed otherwise than to a sheriff or keeper of a prison—or where the account of the cause of detention of the party is not immediately connected with the purpose for which he is to be brought up on the *habeas*—the words in italics should be omitted; and they are usually omitted where such party is an infant: see Braithwaite's Pr. 225.

(*b*) Braithwaite's Pr. 223; and see Dan. Pr. 414.

(*c*) See Dan. Pr. 416; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 12. For order in like case, see Seton, 1266, No. 5.

(*d*) Braithwaite's Pr. 224. As to when this direction will be given, see Ord. XXX. 3; Dan. Pr. 416, n. (*s*). The direction is indorsed on the order directing the former writ to issue: *ib.*

395.
Notice of motion, that defendant remain in custody till answer (*e*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the defendant A. B. may remain in the custody of the Keeper of the City of London Prison at Holloway until he puts in his answer to the plaintiff's bill, and clears his contempt.

396.
Notice of motion, for leave to file traversing answer for defendant (*f*).

The same as No. 459, *post.*

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3. *Where Sheriff returns "attached and in prison," to an attachment* (*g*).

397.
Notice of motion, to take bill *pro confesso*, at the hearing (*h*).

The same as No. 470, *post.*

398.
Motion paper, for a *habeas*, to bring up defendant (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a *habeas*, directed to the Keeper of the City of London Prison at Holloway [*or other custodian of the defendant*], to bring the defendant A. B. to the bar, for not answering the plaintiff's bill.

The attachment for want of answer, and the sheriff's return [*Or*, keeper's certificate], accompany.

399.
Petition of course, for the like (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows.

1. Your petitioner lately filed his bill in this cause against the defendant A. B.

2. On the —— day of ——, 187—, an attachment, directed to the sheriff of Middlesex [*or as may be*], was issued against the said defendant, for his contempt in not answering the said bill.

(*e*) See Dan. Pr. 415; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 12. For order in like case, see Seton, 1264, No. 14. For affidavit of service of the notice, see *ante*, No. 47.

(*f*) See *post*, No. 459, n. (*g*).

(*g*) See Dan. Pr. 414—417. The sheriff's return in this case ordinarily runs thus: "I have attached the within named A. B.: whose body remains in Her Majesty's gaol for my county of ——, under my custody [*or as may be*].—The answer of C. D., sheriff": Braithwaite's Pr. 281.

(*h*) See Dan. Pr. 414, n. (*b*); and *post*, No. 470, n. (*c*).

(*i*) See Dan. Pr. 414, 415. For orders in like case, see *Smalley* v. *Marsh*, M. R. 23 March, 1870, Rolls' Lib.; *Whitaker* v. *Newman*, V. C. M. 23 June, 1870, Reg. Lib. B. 1620; and see Seton, 1262, No. 8. As to the course, where the defendant is in gaol for a misdemeanor, see Dan. Pr. 416.

3. It appears by the return of the said sheriff [*or as may be*] to the said writ that the said defendant is a prisoner in his custody [*or as may be*].

Your petitioner therefore humbly prays, that a writ *of habeas* may issue, directed (*Continue as in* No. 398, *ante, to* bill).

And your petitioner will ever pray, &c.

400.

Præcipe: *The writ:* *Indorsement:* } The same as Nos. 390—392, *ante;* but describe correctly the custodian of the defendant.

Habeas thereon (*k*).

401.

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff: on the defendant A. B. being brought up by *habeas* from the City of London Prison at Holloway, for not answering the plaintiff's bill: that he be remanded—*If the bill is to be taken pro confesso, add:* And to move, thereupon, for a second *habeas,* directed to the Keeper of that Prison, to bring up the defendant, preparatory to the bill being taken *pro confesso* at the hearing.

Motion paper, to remand defendant to City of London Prison, when brought up from thence by *habeas*—and for a second *habeas* (*l*).

402.

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff: on the defendant A. B. being brought up by *habeas* from —— prison, for not answering the plaintiff's bill: that he be turned over to the City of London Prison at Holloway.

Motion paper, to turn defendant over to that prison, where brought up from another by *habeas* (*m*).

403.

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a second *habeas,* directed to the Keeper of the City of London Prison at Holloway, to bring the defendant A. B. to the bar, for not answering the plaintiff's bill, preparatory to the bill being taken *pro confesso* at the hearing.

Order to turn over, dated ——, 187—, and keeper's certificate, accompany.

Motion paper, for a second *habeas* thereupon, preparatory to taking bill *pro confesso* (*n*).

(*k*) See Dan. Pr. 414; and notes to Nos. 390—392, *ante.*

(*l*) See Dan. Pr. 414, 415. For order in like case, see Seton, 1262, No. 12.

(*m*) See Dan. Pr. 414, 415; and *Lister* v. *Warburton,* V. C. M. 17 Dec. 1868, Reg. Lib. B. 3206. For order in like case, see Seton, 1262, No. 10.

(*n*) See Dan. Pr. 415; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 2. For order in like case, see Seton, 1262, No. 11.

404.

Petition of course, for a second *habeas* thereupon (*o*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. By an order (*Recite order to turn over: see ante*, No. 389).

2. It appears by the certificate of the keeper of the said prison that the said defendant is now in his custody.

Your petitioner therefore humbly prays, that a second writ of *habeas* may issue, directed (*Continue as in* No. 403, *ante*, *to* hearing.)

And your petitioner will ever pray, &c.

405.

Habeas thereon (*p*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 390—392, *ante*.

406.

Motion paper, to remand defendant, and take bill *pro confesso* (*q*).

The same as No. 393, *ante*.

407.

Notice of motion, that defendant remain in custody till answer (*r*).

The same as No. 395, *ante*.

408.

Notice of motion, for leave to file traversing answer for defendant (*s*).

The same as No. 459, *post*.

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4. *Where Sheriff returns "non est inventus," to an attachment* (*t*).

409.

Notice of motion, to take bill *pro confesso*, at the hearing (*u*).

The same as No. 470, *post*.

(*o*) See last note.

(*p*) See Dan. Pr. 415; and notes to Nos. 390—392, *ante*.

(*q*) See *ante*, No. 393, n. (*c*).

(*r*) See *ante*, No. 395, n. (*e*).

(*s*) See *post*, No. 459, n. (*q*).

(*t*) See Dan. Pr. 417—420. The return in this case ordinarily runs thus: "The within named A. B. is not found in my bailiwick.—The answer of C. D., sheriff": Braithwaite's Pr. 285.

(*u*) See *post*, No. 470, n. (*c*).

410.
Motion paper, for a sequestration (*v*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a sequestration against the defendant A. B., for not answering the plaintiff's bill: the sheriff having returned *non est inventus* to an attachment for want of answer.

The sheriff's return, and an affidavit in support of the application, accompany.

411.
Affidavit in support (*v*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, the plaintiff filed his bill in this cause against the defendant A. B.

2. On the ——, 187—, a writ of attachment, directed to the sheriff of ——, was issued against the said defendant, for not answering the said bill.

3. The said sheriff has returned *non est inventus* to the said writ.

4. *Show that due diligence was used to ascertain where the defendant was at the time of issuing the attachment, and in endeavouring to apprehend him under the same; and that the person who sued forth the writ verily believed, at the time of suing forth the same, that the defendant was in the county into which the writ was issued.*

5. *Show means of knowledge.*

412.
The sequestration (*v*).

Præcipe: The same as No. 330, *ante;* but state the nature of the contempt to be: For not answering at the suit of C. A., plaintiff.

The writ: } The same as Nos. 331, 332, *ante.*
Indorsement: }

413.
Motion paper, for the Serjeant-at-Arms to apprehend defendant (*y*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the Serjeant-at-Arms may apprehend the defendant A. B., and bring him to the bar, for not answering the plaintiff's bill: the sheriff having returned *non est inventus* to an attachment for want of answer.

The sheriff's return, and an affidavit in support of the application, accompany.

(*v*) See Dan. Pr. 417, 418; Ord. XII. 6. For order in like case, see Seton, 1260, No. 1.

(*y*) See Dan. Pr. 418. For order in like case, see *Rawlinson* v. *Stringer*, V. C. S., 28 May, 1868, Reg. Lib. B. 1230; and see Seton, 1260, No. 2. The order is delivered by the Registrar to the Serjeant-at-Arms, or his deputy: Dan. Pr. 418, n. (*h*); Ord. XXX. 2. As to the duties of the Serjeant-at-Arms, see 2nd Rep. Eng. & Ir. Com., Appx. 121.

414. Affidavit in support (*z*).

The same as No. 411, *ante*.

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415. Motion paper, to turn defendant over to prison, on being brought up by Serjeant-at-Arms (*a*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff: on the defendant A. B. being brought to the bar by the Serjeant-at-Arms for not answering the plaintiff's bill: that he be turned over to the City of London Prison at Holloway.

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416. Motion paper, for a *habeas* thereupon, preparatory to taking bill *pro confesso* (*b*).

The same as No. 388, *ante*.

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417. Petition of course, for the like (*b*).

The same as No. 389, *ante*.

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418. *Habeas* thereon (*c*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 390—392, *ante*.

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419. Motion paper, to remand defendant, and take bill *pro confesso* (*d*).

The same as No. 393, *ante*.

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420. Motion paper, for a sequestration, on return *non est inventus* by Serjeant-at-Arms (*e*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a sequestration against the defendant A. B. for not answering the plaintiff's bill: the Serjeant-at-Arms having returned *non est inventus*.

The order dated ——, 187—, for the Serjeant-at-Arms, and his return, accompany.

(*z*) See last note. The affidavit must be made by the solicitor of the plaintiff; or by his town agent, if the attachment was issued by such agent: 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 1; Dan. Pr. 418.

(*a*) See Dan. Pr. 418. For order in like case, see Seton, 1262, No. 10. For the practice, where the Serjeant-at-Arms returns that the defendant is in custody on other process, or *non est inventus*, see Dan. Pr. 418; Seton, 1262, No. 9.

(*b*) See Dan. Pr. 418. For order in like case, see Seton, 1263, No. 11; and see *ante*, No. 388, n. (*s*).

(*c*) See Dan. Pr. 415, 418; and notes to Nos. 390—392, *ante*.

(*d*) See *ante*, No. 393, n. (*c*).

(*e*) See Dan. Pr. 418. For order in like case, see Seton, 1261, No. 4;

421.
Motion paper, to take bill *pro confesso* (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that his bill may be taken *pro confesso* against the defendant A. B., at the hearing of this cause.

Section II.—Against Particular defendants (*h*).

1. *Peers, and Members of Parliament* (*i*).

422.
Motion paper, for a sequestration *nisi* (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for a sequestration *nisi* against the defendant A. B., for not answering the plaintiff's bill.

A print of the bill, and an affidavit in support, accompany (*l*).

423.
Affidavit in support (*m*).

The same as No. 380, *ante*.

424.
Motion paper, for a sequestration absolute (*n*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the order dated the ——, 187—, for a sequestration *nisi* against the defendant A. B., for not answering the plaintiff's bill, may be made absolute.

The order, and an affidavit of service thereof, accompany (*o*).

Rawlinson v. *Stringer*, 11 June, 1868, Reg. Lib. B. 1354. For subsequent order (on the answer being filed) directing the sequestrators to withdraw from possession, pass their accounts, and pay balance to defendant, see S. C. 11 Sept. 1868, M. R. for V. C. S., Reg. Lib. B. 2507: Dan. Pr. 419, n. (*o*). As to taking the bill *pro confesso*, on a return of *non est inventus* by Serjeant-at-Arms, see *post*, Chap. XI.

(*g*) See Dan. Pr. 418.

(*h*) *Ibid.*, 420—427.

(*i*) *Ibid.*, 420, 421.

(*k*) *Ibid.*, 420. For order in like case, see Seton, 1261, No. 5. As to substituted service of the order *nisi*, see Dan. Pr. 398; and *ante*, No. 327.

(*l*) The Record and Writ Clerk's certificate of no answer filed will also be required: Dan. Pr. 420.

(*m*) See Dan. Pr. 420.

(*n*) *Ibid.* For order in like case, see Seton, 1261, No. 6.

(*o*) The Registrar's certificate of no cause shown, and the Record and Writ Clerk's certificate of no answer filed, will also be required: Dan. Pr. 420.

425.
Affidavit in support (*p*).

The same as No. 48, *ante*.

426.
Motion paper, to take bill *pro confesso* thereupon (*q*).

The same as No. 421, *ante;* and add:
Order absolute dated ——, 187—, for a sequestration accompanies.

427.
Motion paper, for order *nisi* to take bill of discovery *pro confesso* (*r*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, for an order *nisi* to take the plaintiff's bill of discovery *pro confesso* at the hearing of this cause, against the defendant A. B., for want of answer thereto.
A print of the bill, and an affidavit in support, accompany (*s*).

428.
Affidavit in support (*t*).

The same as No. 380, *ante*.

429.
Motion paper, to make such order absolute (*t*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that the order *nisi*, dated the ——, 187—, to take the plaintiff's bill of discovery *pro confesso* against the defendant A. B., may be made absolute.
The order *nisi*, and an affidavit of service thereof, accompany (*u*).

430.
Affidavit in support (*t*).

The same as No. 48, *ante*.

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2. *Attorney-General* (*x*).

431.
Motion paper, to take bill *pro confesso*, unless answer put in (*a*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that the defendant Her Majesty's Attorney-General may put in his answer to the plaintiff's bill within (one week); or, in default thereof, that the bill

(*p*) See Dan. Pr. 420.

(*q*) *Ibid.*, 421, 447. For order in like case, see Seton, 1266, No. 4; and see *post*, No. 470, n. (*c*).

(*r*) Dan. Pr. 420, 421, 447; 11 Geo. IV. & 1 Will. IV. c. 36, s. 13. For order in like case, see Seton, 1267, No. 7.

(*s*) The Record and Writ Clerk's certificate of no answer filed will also be required: Dan. Pr. 421.

(*t*) See Dan. Pr. 421, 447.

(*u*) *Ibid.* The Registrar's certificate of no cause shown, and the Record and Writ Clerk's certificate of no answer filed, will also be required.

(*x*) As to the proceedings, in default of answer by the Attorney-General, see Dan. Pr. 421, 447; and see *post*, No. 470, n. (*c*).

(*a*) See Dan. Pr. 421.

may be taken *pro confesso* against him at the hearing of this cause.

An affidavit in support accompanies (*b*).

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432. Affidavit in support (*c*).

The same as No. 380, *ante*.

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3. *Corporations aggregate* (*d*).

433. *Distringas* (*e*).

Præcipe: } The same as Nos. 335, 337, *ante;* but sub-
Indorsement: } stitute "answering," for "appearing to."
The Writ:
Alias distringas: } The same as Nos. 336, 338, 339, *ante.*
Pluries distringas: }

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434. Motion papers, for a sequestration *nisi*, and absolute (*f*).

The same as Nos. 340, 341, *ante;* but substitute "answering," for "appearing to."

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435. Motion paper, to take bill *pro confesso* thereon (*g*).

The same as No. 421, *ante.*

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4. *Infants* (*h*).

436. Notice of motion by plaintiff, that a guardian *ad litem* may be assigned an infant defendant (*i*).

The same as No. 118, *ante.*

(*b*) The Record and Writ Clerk's certificate of no answer filed, will also be required.

(*c*) See Dan. Pr. 421.

(*d*) As to the proceedings against a corporation aggregate, for want of answer, see Dan. Pr. 421; and see *ib.* 401, 402.

(*e*) See Dan. Pr. 421; and notes to Nos. 335—339. For *distringas* for not answering, see *General Credit and Finance Co.* v. *London, Chatham, and Dover Railway Co.*, 5 Jan. 1869, Reg. Lib. A. 3; and for *alias distringas*, in like case, see *Goodman* v. *Midland Railway Co.*, 5 Jan. 1869, Reg. Lib. A. 2.

(*f*) See Dan. Pr. 421. For order absolute, in like case, see *Price* v. *Neath and Brecon Railway Co.*, V. C. S., 21 Dec. 1865, Reg. Lib. B. 2429; and see Seton, 1261, No. 7.

(*g*) See Dan. Pr. 421, 447. For order in like case, see Seton, 1266, No. 4; and see *post*, No. 470, n. (*c*).

(*h*) See Dan. Pr. 421.

(*i*) *Ibid.*; and see *ante*, No. 118, n. (*u*).

437. Affidavit in support (*k*).

The same as No. 119, or 120, *ante*.

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5. *Idiots, Lunatics, and Persons of Unsound or Weak Mind* (*k*).

438. Notice of motion, that a guardian *ad litem* may be assigned an idiot, &c., and affidavit in support (*m*).

The same as Nos. 134 and 135, or 136, *ante*.

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6. *Married Women* (*n*).

439. Motion paper, to issue attachment against wife, after order obtained by her to answer separately (*o*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to sue out an attachment, and subsequent process, against the defendant A. B., the wife of the defendant C. B., for want of her answer to the plaintiff's bill, as if she were a *feme sole*: she having obtained an order to answer separately.

A copy of the order, and affidavit in support, accompany (*p*).

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440. Affidavit in support (*o*).

Formal parts: see ante, No. 9.

1. 2. On the (*Prove service on the wife of the copy of the interrogatories: see ante*, No. 380, *pars.* 1. 2).

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441. Notice of motion, by plaintiff, that wife may answer separately from husband (*r*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the defendant A. B., the wife of the defendant C. B., may be ordered within (twenty-eight) days to put in her answer to the plaintiff's bill, separately from her said husband.

(*k*) See Dan. Pr. 421.

(*m*) *Ibid.*, 422—424; and *ante*, No. 134, n. (*l*).

(*n*) See Dan. Pr. 422, 424. For motion papers and cognate forms, where the husband or wife applies to answer separately, see *post*, Nos. 548—551; and see *ante*, Nos. 283, 284, 354—358.

(*o*) See Dan Pr. 423.

(*p*) The application must also be supported by the Record and Writ Clerk's certificate of no answer filed. For forms of motion paper, to serve bill and interrogatories on wife as a *feme sole*, and affidavit in support, see *ante*, Nos. 283, 284.

(*r*) See Dan. Pr. 165, 423. For order in like case, see Seton, 1255, No. 4. For the cases in which the plaintiff can obtain such order, see Dan. Pr. 165.

442.
Affidavit in support(*s*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, the defendants C. B., and A., his wife, entered an appearance

Or, the defendant A. B., the wife of the defendant C. B., entered an appearance—*Or*, the plaintiff entered an appearance for the defendant A. B.—*or as may be*

to the plaintiff's bill in this cause.

2. *Prove service of the copy of the interrogatories: see ante*, No. 380.

3. *State the special grounds for the application; as in the following examples:*

(*a*) By an order, dated the —— day of ——, 187—, leave was given to the defendant C. B. to answer the plaintiff's bill, and defend this suit, separately from his wife, the defendant A. B.; and he has since put in his separate answer to the said bill accordingly:

Or, The defendant C. B. hath, without order, filed the answer of himself only to the plaintiff's bill:

but no order has yet been obtained by or for the defendant A. B., to answer separately from her said husband.

(*b*) The defendant A. B. refuses to join with her husband in answering the said bill.

(*c*) The matters in question in this suit arise in right of the defendant A. B.

(*d*) The defendant C. B. is resident at (*State where*), out of the jurisdiction of this honourable Court. His wife the defendant A. B. is resident within such jurisdiction.

(*e*) The defendant C. B. is of weak or unsound mind; but he has not been so found by proceedings in lunacy. In consequence of such mental infirmity he is incapable of answering the plaintiff's bill (*t*).

4. *Show means of knowledge.*

443.
Motion paper, for leave to serve wife abroad with the notice of motion (*u*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve the defendant A. B., wife of the defendant C. B., at (*State where; as:* Edinburgh, or elsewhere in Scotland), with the annexed notice of motion.

444.
Notice of motion, for leave to issue attachment against wife, where adverse order obtained for her to answer separately (*v*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that he may be at liberty to sue out (*Continue as in* No. 439, *ante, to feme sole*).

(*s*) See *ante*, No. 441, n. (*r*).
(*t*) See Dan. Pr. 423, 424.
(*u*) *Ibid.*, 165.
(*v*) *Ibid.*, 423. For order in like case, see Seton, 1256, No. 7.

445.

Affidavit in support (*w*).

Formal parts: see ante, No. 9.

1. 2. On the (*Prove service on the wife of the copy of the interrogatories: see ante*, No. 380, *pars.* 1. 2).

3. On the (*Prove service of the notice of motion: see ante*, No. 47).

446.

Notice of motion by plaintiff, that husband's separate answer may be taken off the file, for irregularity (*x*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that a certain document filed by the defendant C. B. on the —— day of ——, 187—, purporting to be his answer to the plaintiff's bill, may be taken off the file of this Court for irregularity: with costs, to be paid by the said defendant to the plaintiff.

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7. *Paupers* (*z*).

447.

Oath of, and questions put to, imprisoned defendant, as to his inability, from poverty, to put in his answer (*y*.)

To the defendant: What is your name?

You swear that you will true answer make to all such questions as shall be put to you by the Court—So help you God.

To the defendant: Are you unable, by reason of poverty, to employ a solicitor to put in your answer to the plaintiff's bill?

(*w*) See Dan. Pr. 423.

(*x*) *Ibid.*, 164, 423.

(*y*) *Ibid.*, 424; Oaths in use in Court of Chan. 3. The oath is administered by the Registrar.

(*z*) For the practice, where an imprisoned defendant alleges his inability, from poverty, to answer the bill, see Dan. Pr. 424—427; Ord. XII. 4; and as to assigning counsel and a solicitor to an imprisoned defendant, on report of solicitor to Suitors' Fund, or of gaoler, see 23 & 24 Vic. c. 149, ss. 2, 5, 13; and see 25 & 26 Vic. c. 104. For orders in like cases, see Seton, 1272, Nos. 9, 10; 1274, No. 16. See also 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 6; 23 & 24 Vic. c. 149, s. 4. For order, by consent of plaintiff, discharging defendant out of custody for want of answer to amended bill, on his making oath of poverty, and offering to attend an examiner, at his own expense, and be examined *vivâ voce* upon the matters stated and charged in the bill, in lieu of putting in an answer, and his deposition thereon to be treated as his answer, and on his solicitor personally undertaking to pay £100 into Court as a security fund, see *Lister* v. *Warburton*, V. C. M. 17 Dec. 1868, Reg. Lib. B. 3206; For further order, appointing a special examiner, and directing the defendant to attend him, pursuant to his undertaking, see S. C., V. C. M. 8 Feb. 1870, Reg. Lib. A. 332; And for further order, directing

447a.
Summons to proceed under order directing inquiry as to imprisoned defendant's inability from poverty to put in answer (*a*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, to proceed with the inquiry directed by the order dated the ——, 187—.

448.
Motion paper, by defendant, after such inquiry, for leave to answer *in formâ pauperis* (*b*).

Formal parts: see ante, No. 53.
To move on behalf of the defendant A. B., that C. D., esquire, may be assigned his counsel, and Mr. John James Johnson may be appointed his solicitor, to put in his answer to the plaintiff's bill, clear his contempt, and defend this suit: the Chief Clerk having, pursuant to the order dated ——, 187—, certified that the said defendant is too poor to put in his answer.

449.
Notice of motion, by defendant, for his discharge from custody, on answering (*c*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that he may be discharged out of the custody of the Keeper of the City of London Prison at Holloway [*or as may be*], touching his contempt in not answering the plaintiff's bill: he having now put in his answer; and that the plaintiff's costs occasioned by such contempt may be taxed and paid out of the Suitors' Fund.

450.
Motion paper, by plaintiff, for a *habeas* to

The same as No. 388, *ante*, to "plaintiff's bill"; and add: Order dated —— 187—, for inquiry as to poverty, and

that a copy of the transcript of the notes taken in shorthand of the deposition of the defendant before the examiner should, when signed by both of them, be received and filed as the answer of the defendant to the amended bill, and treated as such for all the purposes of the cause, see S. C., V. C. M. 23 Mar. 1870, Reg. Lib. B. 667, on defendant signing the Registrar's book, signifying his assent to the order; and see S. C., Dan. Pr. 431, n. (*y*). Where prisoner is of unsound mind, see 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 9; and Dan. Pr. 427.

(*a*) See Dan. Pr. 424. For order directing the inquiry, see Seton, 1273, No. 12; and for order without inquiry, see *ib.* 1272, No. 11. As to service of notice of the proceedings on the solicitor to the Suitors' Fund, see Dan. Pr. 425; Ord. XII. 5.

(*b*) See Dan. Pr. 425. For order in like case, see Seton, 1273, No. 13.

(*c*) See Dan. Pr. 425; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 7; and see 23 & 24 Vic. c. 149, s. 6. For orders in like case, see Seton, 1273, No. 15; 1274, No. 16. Notice of the motion must be served on the solicitor to the Suitors' Fund two clear days at least before the day on which the application is intended to be made; and the motion must be supported by the Record and Writ Clerk's certificate that the answer has been filed: Dan. Pr. 425.

bring up defendant, after inquiry as to poverty (*d*).

Chief Clerk's certificate, dated ——, 187—, of the result, accompany.

451.

Habeas thereon (*e*).

Præcipe: / *The Writ:* / *Indorsement:* } The same as Nos. 390—392, *ante*.

Section III.—Effect of a Contempt upon the Proceedings in the Cause (*f*).

452.

Notice of motion, to stay proceedings by plaintiff till he clears his contempt (*g*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that all proceedings in this cause may be stayed until the plaintiff has cleared his contempt in not (*State what; as:* paying the said defendant the costs directed to be paid by the order dated the ——, 187—).

Section IV.—In what manner Contempts in Process may be cleared, waived, or discharged (*h*).

453.

Motion paper, by defendant, to clear contempt in not appearing or answering, where process not executed (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that he may be discharged touching his contempt for not appearing to [*Or*, not answering] the plaintiff's bill: upon payment or tender of the costs thereof to the plaintiff's solicitor or agent: the defendant having now appeared to [*Or*, answered] the bill.

No process of contempt for want of appearance [*Or*, answer] has been executed.

(*d*) See Dan. Pr. 425. For order in like case, see Seton, 1273, No. 14.

(*e*) See Dan. Pr. 425; and notes to Nos. 390—392, *ante*.

(*f*) See Dan. Pr. 427—431.

(*g*) *Ibid.*, 430; and see *post*, Chap. XIX.

(*h*) See Dan. Pr. 431—436.

(*i*) *Ibid.*, 431; and see Ord. XII. 7. The Record and Writ Clerk's certificate that the appearance has been entered, or answer filed, will be required: Dan. Pr. 431.

454.
Petition of course, for the like (*j*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner: who has incurred a contempt for not appearing [*Or*, not answering] the said bill; but no process of contempt hath yet been executed against him.

2. Your petitioner has now entered an appearance [*Or*, filed his answer] to the said bill.

Your petitioner therefore humbly prays, that he may be discharged touching his said contempt: upon payment or tender of the costs thereof to the plaintiff's solicitor or agent.

And your petitioner will ever pray, &c.

455.
Motion paper, by defendant, to clear contempt, where process executed (*j*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that he may be discharged from the custody of the Keeper of the City of London Prison at Holloway [*or as may be*], touching his contempt for not (*Continue as in* No. 453, *ante, to* the bill).

456.
Petition of course, for the like (*k*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner—*If so:* who entered an appearance thereto.

2. *State execution of process of contempt; as:* Your petitioner is in the custody of the Keeper of the City of London Prison at Holloway [*or as may be*], under an attachment issued against him for a contempt incurred by him in not appearing to [*Or*, not answering] the said bill.

3. Your petitioner has now entered an appearance [*Or*, filed his answer] to the said bill.

Your petitioner therefore humbly prays, that he may be discharged from the said custody touching his said contempt: upon payment or tender of the costs thereof to the plaintiff's solicitor or agent.

And your petitioner will ever pray, &c.

(*j*) See *ante*, No. 453, n. (*i*).

(*k*) *Ibid.* For order in like case, see *Symons* v. *De Barros*, M. R. 21 June, 1870, Rolls' Lib.

457.

Notice of motion, to amend bill, without discharging a contempt (*l*).

The same as No. 230, *ante*.

458.

Notice of motion, to discharge process of contempt, for irregularity (*m*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the attachment issued against him for not appearing to [*Or*, not answering] the plaintiff's bill [*or as may be*], and directed to the Sheriff of Middlesex [*or as may be*], may be set aside for irregularity: with costs, to be paid by the plaintiff to the said defendant.

Section V.—Process by Filing a Traversing Answer, or Traversing Note (*p*).

459.

Notice of motion, by plaintiff, for leave to file traversing answer for defendant (*q*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that he may be at liberty to put in an answer to the plaintiff's bill, in the name of the defendant A. B., under rule 11 of the statute 11 Geo. IV. & 1 Will. IV. c. 36, s. 15.

460.

Traversing note, to original or supplemental bill, or bill amended before answer (*r*).

In Chancery.

(*Full title of cause, and reference to the record.*)

The plaintiff intends to proceed with his cause, as if the defendant A. B. had filed an answer, traversing the case made by the bill.

(*l*) See *ante*, No. 230, n. (*y*).

(*m*) See Dan, Pr. 434. As to applying to discharge process for irregularity, and as to waiver, see Dan. Pr. 434—436.

(*p*) As to a traversing answer, see Dan. Pr. 415, n. (*k*), 437; 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 11. As to a traversing note, see Dan. Pr. 437—440.

(*q*) See Dan. Pr. 437; and *ante*, Nos. 396, 408. For order in like case, see Seton, 1264, No. 13. As to the length of notice required, see Dan. Pr. 437. The application must be supported by production of the contempt orders, the keeper's certificate of custody, the Record and Writ Clerk's certificate of no answer filed, and an affidavit of service of the notice of motion: Dan. Pr. 437. For form of affidavit, see *ante*, No. 47.

(*r*) See Dan. Pr. 438; Ord. XIII. 1—3, 6. The note must be written on paper of the same description and size as that on which bills are printed:

461.
Traversing note, to bill amended after answer (*s*).

In Chancery.

(*Full title of cause, and reference to the record.*)

The plaintiff intends to proceed with his cause, as if the defendant A. B. had filed an answer, traversing the allegations introduced into the bill by amendment.

462.
The like, after exceptions (*s*).

In Chancery.

(*Full title of cause, and reference to the record.*)

The plaintiff intends to proceed with his cause, as if the defendant A. B. had filed a further answer, traversing the allegations in the bill whereon the exceptions are founded.

463.
Motion paper, for leave to serve traversing note on a defendant who has not appeared (*t*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve upon the defendant A. B. a copy of the traversing note filed against him.

464.
Affidavit in support (*t*).

Formal parts: see ante, No. 9.

1. *Prove service of copies of the bill and interrogatories: see ante*, Nos. 304, 380.

2. The said defendant A. B. is not an infant; and he is now resident at (*State where*), within the jurisdiction of this honourable Court: as I know from (*Show means of knowledge*).

465.
Motion paper, by plaintiff, for substituted service of traversing note (*u*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of a copy of the traversing note filed by the plaintiff against the defendant A. B., upon (*State whom: see ante*, No. 285), may be deemed good service on the said defendant.

Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. No fee is payable on filing the note: Dan. Pr. 439, n. (*b*). The names of several defendants may be included in one note, notwithstanding they have appeared by separate solicitors: Dan. Pr. 439. For form of indorsement on the note, see *ante*, No. 4, or 7.

(*s*) See *ante*, No. 460, n. (*r*).

(*t*) See Dan. Pr. 438—440. For order in like case, see Seton, 1246, No. 10. The application must also be supported by the Record and Writ Clerk's certificate of an appearance by the plaintiff for defendant, of the filing of the note, and that no plea, answer, or demurrer has been filed by defendant.

(*u*) See Dan. Pr. 439. The application must be supported by the certificate mentioned in the last note.

466.
Affidavit in support (*x*).

Formal parts: see ante, No. 9.

1. *Prove service of copies of the bill and interrogatories: see ante*, Nos. 304, 380.

2. *Show efforts made to serve copy of the traversing note.*

3. *State grounds for selecting the proposed substitute: see ante*, No. 286, *par.* 2.

4. The said defendant is not an infant.

5. *Show means of knowledge.*

467.
Affidavit of service of copy of traversing note (*y*).

Formal parts: see ante, No. 9.

On defendant, or a substitute: 1. On the —— day of ——, 187—, I served the defendant A. B. with a true copy of the traversing note filed in this cause by the plaintiff, on the —— day of ——, 187—, and which note, as so filed, is in the words and figures set forth in the schedule hereto, by delivering such copy to, and leaving the same

If service personal, say: with the said defendant A. B., at (*State where*), in the (county) of ——.

Or, if service not personal, say: with the (*State what member of the family; as:* the wife—*Or*, son—*Or*, daughter—*Or*, servant) of the said defendant A. B., at the dwelling-house, or usual place of abode, of the said defendant, situate at (*State where*), in the (county) of ——.

If on a substitute, say: with G. H., the person named in the order hereinafter mentioned, at (*State where*).

On defendant's solicitor: 1. On the —— day of —— 187—, I served Mr. C. D., the solicitor in this cause for the defendant A. B., with a true copy of the traversing note filed in this cause by the plaintiff on the —— day of ——, 187—, and which note, as so filed, is in the words and figures set forth in the schedule hereto, by delivering such copy to, and leaving the same

If service personal, say: with the said C. D., at (*State where*), in the (county) of ——.

Or, if service not personal say: with the clerk [*Or*, servant] of the said C. D., at the office [*Or*, address for service] of the said C. D., situate at (*State where*), in the (county) of ——.

If served under a special order, add: 2. At the time of the service aforesaid of the said copy of the traversing note, I also served the said defendant A. B. [*Or*, the said G. H.] with an order made in this cause dated the —— day of ——, 187—, whereby it was ordered that (*Recite so much of the order as directs the service*), by delivering a true copy of such order to, and leaving the same with, the said defendant A. B. [*Or*, the said G. H.—*or as may be*]; and

(*x*) See *ante*, No. 465, n. (*w*).
(*y*) See Dan. Pr. 440.

I at the same time produced and showed to the said defendant [*or as may be*] the said original order, duly passed and entered.

The schedule above referred to.

(*Set out copy of the traversing note.*)

468.

Notice of motion, by defendant, to take traversing note off the file, and for leave to answer (*b*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the traversing note filed by the plaintiff against the said defendant may be taken off the file of this Court; and that the said defendant may be at liberty within (one month) to plead, answer, or demur [*Or*, to put in a further answer] to the plaintiff's bill.

469.

Notice of motion, by plaintiff, to take traversing note off the file (*c*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the traversing note filed by him against the defendant A. B. may be taken off the file of this Court.

(*b*) See Dan. Pr. 439; Ord. XIII. 7. The application must be supported by an affidavit explaining the delay, and that defendant is advised to put in the proposed defence: Dan. Pr. 439.

(*c*) See Dan. Pr. 440.

CHAPTER XI.

TAKING BILLS PRO CONFESSO (*a*).

Section I.—Preliminary Order (*b*).

470.
Notice of motion, to take bill *pro confesso*, after attachment executed (*c*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the plaintiff's bill may be taken *pro confesso* against the defendant A. B., at the hearing of this cause.

471.
The like, where not executed, but defendant has appeared (*d*).

The same as No. 470, *ante*.

472.
Affidavit in support (*e*).

Formal parts: see ante, No. 9.

1. *Prove delivery of a copy of the interrogatories: see ante*, No. 380.

2. *Show that the plaintiff is unable, with due diligence, to procure a writ of attachment, or any subsequent process, for want of answer to be executed against the defendant, by reason of his being out of the jurisdiction, or being concealed, or for any other cause.*

3. *Prove service of the notice of motion: see ante*, No. 47.

4. *Show means of knowledge.*

(*a*) For the practice as to taking bills *pro confesso*, see Dan. Pr. 415, 416, 441—455; Ord. XXII.

(*b*) See Dan. Pr. 441—449; Ord. XXII. 1—5.

(*c*) See Dan. Pr. 442, 446; Ord. XXII. 1. For order in like case, see *Ridler v. Dunn*, V. C. J., 18 Jan. 1870, Reg. Lib. B. 387, where a written answer had been filed, but no printed copy; Seton, 1265, No. 1; and see *ante*, Nos. 383, 393, 397, 406, 421. The application must be supported by the sheriff's return to the attachment, and the Record and Writ Clerk's certificate of no answer filed, and an affidavit of service of the notice. For such affidavit, see *ante*, No. 47. As to the length of notice required to be given, see Ord. XXII. 1. As to taking the bill *pro confesso* against a peer or M.P., see Dan. Pr. 420, 447; and *ante*, Nos. 426, 427, 429; against the Attorney-General, Dan. Pr. 421, 447; and *ante*, No. 431; and against a corporation aggregate, Dan. Pr. 421, 447; and *ante*, No. 435.

(*d*) See Dan. Pr. 443, 446; Ord. XXII. 2, 3. For order in like case, see Seton, 1265, No. 2. As to the length of notice required, see Ord. XXII. 3.

(*e*) See Dan. Pr. 445. The application must be supported by the sheriff's

473. Notice of motion, to take bill *pro confesso* against absconding defendant who has not appeared (*f*).

The same as No. 470, *ante*.

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474. Affidavit in support (*g*).

Formal parts: see ante, No. 9.

1. Interrogatories for the examination of the defendant A. B. in answer to the plaintiff's bill were filed on the —— day of ——, 187—.

2. *The same as par.* 2 *of* No. 472, *ante*.

3. *Show means of knowledge.*

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475. Notice of motion, by defendant, to be discharged out of custody, on submitting to the bill being taken *pro confesso* (*h*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that he may be discharged out of the custody of the Keeper of the City of London Prison at Holloway [*or as may be*], touching his contempt in not answering the plaintiff's bill: the said defendant submitting to have such bill taken *pro confesso* against him at the hearing of this cause.

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return to the attachment (if issued), and the Record and Writ Clerk's certificate of the defendant's appearance, and of no answer filed.

(*f*) See Dan. Pr. 443, 444; Ord. XXII. 4. For order in like case, see Seton, 1265, No. 3. The notice in this case is required to be inserted in the London Gazette: Ord. XXII. 4. As to the length of notice required, see *ib.*; Dan. Pr. 443.

(*g*) See Dan. Pr. 445. The application must also be supported by the Record and Writ Clerk's certificate of no answer filed, and that plaintiff has entered an appearance for the defendant; and by production of the London Gazettes: Dan. Pr. 445.

(*h*) See Dan. Pr. 449; Ord. XXII. 5; and see 11 Geo. IV. & 1 Will. IV. c. 36, s. 15, r. 12.

Section II.—Hearing, Decree, and Subsequent Proceedings (*i*).

476.
Notice to defendant, where decree not absolute (*k*).

In Chancery.

(*Short title.*)

Take notice, that if you, the within named defendant A. B., desire permission to answer the plaintiff's bill, and set aside the within decree, application for that purpose must be made to this Court within three weeks after service of this notice (*l*): or, otherwise, you, the said defendant, will be absolutely excluded from making any such application. Dated this —— day of ——, 187—.

C. D., of, *&c.*,
Plaintiff's solicitor [*Or*, agent].

To the within named defendant A. B. (*If so:* and to Mr. E. F., his solicitor).

477.
Motion paper, for a time to be appointed, where notice to be served abroad (*m*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the time to be specified in the notice required by Cons. Ord. 22, r. 11, to be served with the decree *pro confesso*, dated ——, 187—, on the defendant A. B., at (*State where*), may be —— (*n*) after service thereof.

The decree, and an affidavit in support of the application, accompany.

478.
Affidavit in support (*o*).

Formal parts: see ante, No. 9.

The defendant A. B. is now residing at (*State where; as:* Paris, in France), out of the jurisdiction of this honourable Court: as I know from (*Show means of knowledge*).

(*i*) See Dan. Pr. 449—455. For form of decree on bill taken *pro confesso* at the hearing, see Seton, 1128, No. 1. As to setting down the cause for hearing, see *post*, Chap. XXIII.

(*k*) See Dan. Pr. 450; Ord. XXII. 11. The form assumes that the notice will be endorsed on the office copy of the decree required by rule 11 to be served on the defendant or his solicitor. As to the service of a summons to proceed under a decree, see Dan. Pr. 452.

(*l*) See Ord. XXII. 12; Dan. Pr. 450. If the notice is to be served abroad, insert the time specially appointed: see *post*, No. 477.

(*m*) See Dan. Pr. 450; Ord. XXII. 12. For order in like case, see *Dickinson* v. *Miller*, V. C. S., 7 June, 1866, Reg. Lib. A. 1982; Seton, 1130, No. 1.

(*n*) The Registrar, in drawing up the order, will see that the proper time is inserted: see Dan. Pr. 450, n. (*z*).

(*o*) See Dan. Pr. 450.

479. Motion paper, for leave to proceed under decree, though defendant not served with it (*p*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the accounts and inquiries directed by the decree dated the ——, 187—, may be taken and made, notwithstanding the defendant A. B. has not been served with an office copy of the said decree (*If decree not absolute, add:* and with the notice required to be given by Cons. Ord. 22. r. 11): see Cons. Ord. 22, r. 13.

The decree, and an affidavit in support of the application, accompany.

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480. Notice of motion, for leave for receiver to enter into possession (*q*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that C. D., the receiver appointed in this cause of the real and personal estate of the defendant A. B., under the decree dated the ——, 187—, may be at liberty to take possession of the said real estate, and collect and get in the said personal estate, pursuant to the said decree.

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481. Notice of motion, for leave to sue out process of contempt (*r*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that he may be at liberty to sue out such process of contempt as he may be advised, against the defendant A. B., to compel the performance of the decree dated the ——, 187—.

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482. Motion paper, that decree be made absolute (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the decree dated the ——, 187—, may be made absolute against the defendant A. B.

(*p*) See Dan. Pr. 451; Ord. XXII. 13. For order in like case, see Seton, 1131, No. 3. As to the contents of the affidavit in support, see *ib.*

(*q*) See Dan. Pr. 451; Ord. XXII. 13. For order in like case, see Seton, 1132, No. 5. For affidavit of service of the notice, see *ante*, No. 47.

(*r*) See Dan. Pr. 451; Ord. XXII. 13. For order in like case, see Seton, 1132, No. 4. For affidavit of service of the notice, see *ante*, No. 47.

(*s*) See Dan. Pr. 451; Ord. XXII. 15. For order in like case, see Seton, 1130, No. 2.

483.
Affidavit in support (*t*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served the defendant A. B.

Or, I served Mr. E. F., the solicitor in this cause for the defendant A. B.,

with an office copy of the decree made in this cause by his lordship the Master of the Rolls

Or, by his honor the Vice-Chancellor Sir John Stuart—*or as may be*,

dated the —— day of ——, 18—, and with a notice in writing indorsed on the said office copy in the words and figures set forth in the schedule hereto [*or as may be*], by delivering such office copy and notice to, and leaving the same with, the said defendant A. B.,

Or, the said E. F.,

at (*State where*), in the (county) of ——.

2. The said office copy, at the time of the aforesaid service thereof, appeared to me to be duly signed by Seth Charles Ward [*or as may be*], esquire, one of the Clerks of Records and Writs.

3. *Where the service is made under a special order, prove service of a copy of such order: see ante*, No. 304, *par.* 3.

The schedule above referred to.

(*Set forth a copy of the notice: see ante*, No. 476.)

(*t*) See Dan. Pr. 451.

CHAPTERS XII., XIII.

DEFENCE TO A SUIT.—APPEARANCE BY DEFENDANT (*a*).

484. *Præcipe* for appearance to a bill, by defendant (*b*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Enter an appearance for A. B. to bill [*or as may be*], at the suit of B. A.

Dated the —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance: see ante*, No. 4, *or* 7.)

(*a*) As to the defence to a suit, see Dan. Pr. 456—458. As to the retainer to defend, see Dan. Pr. 259, 456; and for form of retainer, see *post*, Chap. XLIV. As to defending *in formâ pauperis*, see Dan. Pr. 140—142, 461; Ord. VII. 9—11; Ord. XL. 5; Regul. to Ord. IV. 2, 3; and for forms of petition so to defend, and affidavit in support, see *ante*, Nos. 99, 100. As to the entry of an appearance by a defendant served with a copy of the bill, see Dan. Pr. 459—464; at the hearing, *ib.*; after decree, *ib.* 139, 462; by formal defendants, *ante*, Nos. 249—251, and notes thereto; to an order of revivor, supplemental order, or supplemental statement, Dan. Pr. 461, and *post*, Chap. XXXIII.; to a summons originating a proceeding, *post*, Chap. XXIX.; and to a special case, *post*, Chap. XLIII. As to the entry of an appearance by plaintiff for defendant, see *ante*, Nos. 302—305, and notes thereto; and as to appearance generally, and the time allowed to enter the same, see Dan. Pr. *Index*, Appearance.

(*b*) See Dan. Pr. 460; Braithwaite's Pr. 327. Any number of defendants may be included in one *præcipe;* and the names of all the defendants so included must be set forth, notwithstanding the same solicitor appears for all. Where a solicitor who is himself a defendant, and defends in person, is concerned for co-defendants, the appearance of himself must be entered on a separate *præcipe*, unless he be in the same interest with them: Dan. Pr. 460, n. (*f*). The following fees are payable in Chancery fee fund stamps, impressed on or affixed to the *præcipe*, on entering an appearance:—If not more than three defendants, 7*s.*; if more than three, and not exceeding six de-

485.

Notice of appearance (*c*).

Formal parts: see ante, No. 54.

Take notice, that I have this day entered an appearance for the defendant A. B. to the plaintiff's bill [*or as may be*].

486.

Summons, that an appearance entered by an unqualified person may be struck out (*d*).

Formal parts: *see ante*, No. 60.

on the part of the plaintiff, that the appearance entered by the defendant in this cause by and in the name of A. B. may be discharged for irregularity, and struck out of the book kept by the Record and Writ Clerk accordingly: the said A. B. not being the defendant, nor a solicitor of this Court; and that the said A. B. may be ordered to pay the plaintiff his costs occasioned by the said appearance, and of this application.

487.

Motion paper, for leave to enter conditional appearance (*e*).

Formal parts: see ante, No. 53.

To move, on behalf of the defendant A. B.: who has been served with a copy of the plaintiff's bill,

If so: and of the order dated ——, 187—, for service thereof on him,

and intends to apply for the discharge of such service [*or as may be*]: that he may be at liberty to enter a conditional appearance with the Registrar, upon the usual submission.

488.

Petition of course, for the like (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. Your petitioner has been served with a copy of the plaintiff's bill in this cause—*If so:* and of the order made therein, dated the —— of ——, 187—, purporting to authorise such service.

2. Your petitioner is advised that he is entitled to have such service (and order) discharged, and is desirous of entering an

fendants, 14*s.*; and the same proportion for every like number of defendants: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. In this computation, husband and wife, when they appear jointly, are reckoned as one person: Dan. Pr. 460, n. (*f*).

(*c*) See Dan. Pr. 460; Ord. III. 9.

(*d*) For order in like case, see *Sparling* v. *Brereton*, V. C. W., at Chambers, 24 Nov. 1865, Reg. Lib. B. 2373.

(*e*) See Dan. Pr. 460. For order in like case, see *Foley* v. *Maillardet*, V. C. S., 5 Jan. 1864, Reg. Lib. A. 11; and for the practice as to the entry of a conditional appearance, see Dan. Pr. 378, 436, 460.

appearance with the Registrar, preparatory to an application for the discharge thereof to this honourable Court.

Your petitioner therefore humbly prays, that he may be at liberty to enter a conditional appearance with the Registrar, upon the usual submission.

And your petitioner will ever pray, &c.

---

489. Memorandum of entry of conditional appearance thereon (*f*).

(*Insert date; as thus:* Saturday, 4th March, 1871.)

(*Short title, and reference to the record.*)

The defendant A. B. has this day entered his conditional appearance, by Mr. C. D., of (*Place of business*), his solicitor.

C. D., Solicitor for the said defendant.

---

490. Request to withdraw appearance, entered in defendant's name; and consent thereto (*g*).

In Chancery.

(*Short title, and reference to the record.*)

I hereby request that you will withdraw the appearance entered by me on the —— of ——, 187—, for the defendant A. B., as his solicitor [*Or*, agent], to the plaintiff's bill in this cause: such appearance having been entered by mistake. Dated this —— day of ——, 187—.

C. D., of, *&c.*,

To the Clerk of Records and Writs.

I consent to the above.

E. F., of, *&c.*,

Plaintiff's solicitor [*Or*, agent].

---

491. Request to correct appearance, entered as agent instead of as solicitor, or the converse; and consent thereto (*g*).

In Chancery.

(*Short title, and reference to the record.*)

I hereby request that you will alter the *præcipe* for the appearance entered by me in this cause, on the —— of ——, 187—, to the plaintiff's bill, for the defendant A. B., by striking out [*Or*, inserting] the words "Agent for John Jones, of Canterbury" [*or as may be*]: such words having been inserted [*Or*, omitted] therein by mistake. Dated this —— day of ——, 187—.

C. D., of, *&c.*,

Solicitor [*Or*, Agent] for the defendant A. B.

To the Clerk of Records and Writs.

I consent to the above.

E. F., of, *&c.*,

Plaintiff's solicitor [*Or*, agent].

(*f*) See Dan. Pr. 460; and see *Foley* v. *Maillardet*, 7 Jan. 1864, Reg. Lib. A. 11. The memorandum is written in the Registrars' book of decrees and orders by the Clerk at the entering seat; and the entry is signed there by the defendant's solicitor.

(*g*) See Dan. Pr. 463. As to withdrawing an appearance entered by the plaintiff for the defendant, by mistake, see *ante*, Nos. 306, 307, and note thereto.

492.

Notice of motion, or summons, for leave to withdraw, or amend, appearance entered in defendant's name (*h*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B., that he may be at liberty to withdraw the appearance entered in his name to the plaintiff's bill [*or as may be*], in this cause on the —— of ——, 187—: the same having been entered by mistake.

Or, that the *præcipe* for the appearance entered in this cause on the —— of ——, 187—, to the plaintiff's bill may be amended, by striking out [*Or*, inserting] the words "Agent for John Jones, of Canterbury" [*or as may be*]: such words having been inserted [*Or*, omitted] therein by mistake.

(*h*) See *ante*, No. 491, n. (*g*).

CHAPTER XIV.

DEMURRERS (*a*).

SECTION I.—FORM OF DEMURRERS (*b*).

493.

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

General form of a demurrer (*c*).

(1.) Title (*d*).

(2.) Heading (*e*).

The demurrer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

Or,

The demurrer of John Jones (in the bill by mistake called William Jones), the above named defendant [*Or*, one of the above named defendants], to the bill, *&c.*

Or,

The joint and several demurrer of A. B., and C. D., the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or,

The joint demurrer of A. B., and C. his wife, the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or, if they have married since she was made a defendant, say: The joint demurrer of A. B., and C. his wife, lately, and in the bill called, C. D. spinster [*Or*, widow] to the bill, *&c.*

This defendant (*f*) [*Or*, These defendants], by protestation, not

(3.) Protestation (*e*).

(*a*) As to demurrers generally, see Dan. Pr. 465—519.

(*b*) See Dan. Pr. 501—506. As to the general nature of demurrers, see Dan. Pr. 465—469; and the different grounds of demurrer, *ib.* 469—501. For collections of forms of demurrer, see 2 Van Hey. 74—93; Willis, Eq. Pl. 422—484; Drewry, Eq. Pl. 144, 145; Lewis, Eq. Drafting, 338—340; and *post*, Chap. XLVI.; and see *Index*, DEMURRER. As to scandal in a demurrer, see *ante*, No. 61, *et seq.*, and notes thereto; and as to impertinence therein, see Dan. Pr. 290, *et seq.*; 15 & 16 Vic. c. 86, s. 17; Ord. XL. 9, 11.

(*c*) See Dan. Pr. 501; Braithwaite's Pr. 57. As to the form, where the demurrer is accompanied by a plea or answer, see *post*, Chap. XVIII.

(*d*) See Dan. Pr. 501. The title of the demurrer must agree with that of the cause, at the time the demurrer is filed.

(*e*) See Dan. Pr. 501, 502.

(*f*) In practice demurrers are framed in the third person: following the

confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged, doth [*Or*, do] demur in law to the said bill.

(4.) Extent (*g*).

Or, if the demurrer is to part of the bill only, say, after alleged: as to so much of the said bill as seeks (*State what*), this defendant doth [*Or*, these defendants do] demur in law thereto:

(5.) Causes of demurrer (*h*).

And for cause of demurrer showeth [*Or*, show] that (*Set forth the causes of demurrer*).

(6.) Demand of judgment (*i*).

Wherefore, and for divers other imperfections and good causes of demurrer appearing in the said bill, this defendant doth [*Or*, these defendants do] demur thereto; and he prays [*Or*, they pray] the judgment of this honourable Court whether he [*Or*, whether they, or either of them] ought to be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and he prays [*Or*, they pray] to be hence dismissed with his [*Or*, their] costs and charges in this behalf sustained.

(*Name of counsel* (*k*).)

Section II.—Filing, Setting down, and Hearing Demurrers (*l*).

494.

Summons, for further time to demur alone (*m*).

Formal parts: see ante, No. 60.

on the part of the defendant A. B., that he may have —— days further time to plead, answer, or demur alone, to the plaintiff's bill; and that the costs of this application may be costs in the cause.

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forms in use previously to the Chancery Amendment Act, 1852 (15 & 16 Vic. c. 86); but it is conceived they may be framed in the first person: following the model form of answer; thus: "I, the defendant, A. B.," &c.

(*g*) See Dan. Pr. 502; Ord. XIV. 8, 9.

(*h*) See Dan. Pr. 503—505. For forms of causes of demurrer, see *post*, Chap. XLVI.; and *Index*, Demurrer.

(*i*) See Dan. Pr. 505.

(*k*) Ord. VIII. 1; Dan. Pr. 506. The demurring defendant need not sign the demurrer: Dan. Pr. 506.

(*l*) See Dan. Pr. 507—513.

(*m*) *Ibid.*, 508; Ord. XXXVII. 17; but see 15 & 16 Vic. c. 86, s. 13; Ord. XXXVII. 3. As to the time allowed to demur alone, see Dan. Pr. 507.

495.
Summons for leave to demur alone, where the time allowed has expired (*n*).

Formal parts: see ante, No. 60.
on the part of the defendant A. B., that, notwithstanding the time limited by the 37th Consolidated Order, rule 3, has expired, the applicant may be at liberty, on or before the —— day of ——, to demur alone to the plaintiff's bill; and that the costs of this application may be costs in the cause.

496.
Notice of having filed a demurrer (*o*).

Formal parts: see ante, No. 54.
Take notice, that I have this day filed the demurrer of the defendant A. B., to the plaintiff's bill.

497.
Petition to set down a demurrer, in a cause attached to a Vice-Chancellor's Court (*p*).

Title—and address to the L. C.: see ante, No. 56.
The humble petition of the plaintiff [*Or*, defendant A. B.].
Showeth as follows:
1. Your petitioner's [*Or*, The plaintiff's] bill in this cause is marked with the words "Lord Chancellor—Vice-Chancellor

(*n*) For order in like case, see *London, Chatham, and Dover Railway Co.* v. *Imperial Mercantile Credit Association*, V. C. M., at Chambers, for V. C. S., 11 Oct. 1867; and see note to No. 494, *ante*.

(*o*) See Dan. Pr. 509; Ord. III. 9; XXXVII. 2. A demurrer must be copied on paper of the same description and size as that on which bills are printed: Ord. 16 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. But a joint demurrer and answer must be printed, in the same manner as an answer: Dan. Pr. 507, n. (*b*). As to printing answers, see *ante*, No. 195; and *post*, Chap. XVII. The demurrer must be signed by counsel; and be indorsed with the name, &c., of the solicitor or party filing it: Dan. Pr. 378, 379, 507; Ord. III. 2, 5. For form of such indorsement, see *ante*, No. 4, or 7. The demurrer is filed at the Record and Writ Clerks' office; and no fee is payable on filing it: Dan. Pr. 507, n. (*c*). A separate demurrer by a married woman cannot be filed till an order to that effect has been procured; nor a demurrer by an infant, or by a person of unsound mind not defending by committee, till a guardian *ad litem* has been appointed: Dan. Pr. 507.

(*p*) See Dan. Pr. 511. No fiat is required; and no fee is payable on the petition: Reg. Regul. 15 Mar. 1860, r. 3. For order in like case, see *Gully* v. *Davis*, L. C. 26 July, 1870, Reg. Lib. A., 2144; and see Seton, 1257, No. 10. As to setting down a demurrer, see Dan. Pr. 510, 511; Ord. VI. 4; XIV. 10, 11, 14, 15; XXI. 9, 13; XXXVII. 13 (3); Reg. Regul. 15th Mar. 1860, rr. 1—4; and as to service of the order on the solicitor of the opposite party, see Dan. Pr. 511. As to the papers to be left for the Judge, see Dan. Pr. 512; and see Ord. XXI. 12. Counsel's brief consists of copies of the bill and demurrer: Dan. Pr. 512, n. (*z*). For form of order on the hearing of a demurrer, see Seton, 1258, No. 12; and on appeal therefrom, *ib.* 1152, No. 3. For order allowing a demurrer to the whole bill with costs, see *Walters* v. *Webb*, V. C. M., 17 Nov. 1869, Reg. Lib. B. 3005; and overruling a like demurrer, see *Wilson* v. *Furness*

Stuart" [*Or*, Malins—*Or*, Bacon]; and this cause is now attached to the Court of the said Vice-Chancellor.

2. On the —— of ——, 187—, the defendant A. B. [*Or*, your petitioner] filed a demurrer to the whole [*Or*, to part] of the said bill.

3. Your petitioner is desirous that the said demurrer be set down to be argued.

Your petitioner therefore humbly prays, that the said demurrer may be set down to be argued before your lordship next after the pleas, demurrers, and exceptions to answers already appointed for hearing before the said Vice-Chancellor.

And your petitioner will ever pray, &c.

E. F.,
Plaintiff's [*Or*, Defendant's] solicitor.
——, 187—.

498.

Petition to set down a demurrer in a Rolls' cause (*q*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

1. Your petitioner's [*Or*, The plaintiff's] bill in this cause is marked with the words "Master of the Rolls"; and this cause is now attached to your lordship's Court.

2. On the (*Continue as in* No. 497, *ante, to the end: omitting* before the said Vice-Chancellor).

Railway Co., V. C. J., 3 Nov. 1869, Reg. Lib. B. 2655. For order overruling a demurrer, without prejudice to any defence which the defendants might be advised to raise by their answer, see *Cochrane* v. *Willis*, L.JJ., 30 Jan. 1864, Reg. Lib. A. 253; *Sheffield Water Works* v. *Yeomans*, V. C. K., 7 Mar. 1866, Reg. Lib. B. 39 : Law Rep. 2 Ch. 10, n. (1). For form of petition of appeal from an order on demurrer, see *post*, Chap. XXXII. As to the effect of allowing a demurrer, see Dan. Pr. 513—516; and of overruling a demurrer, *ib.* 516—519. As to the costs of demurrers, see Dan. Pr. 510, 515, 516, 519; Ord. XIV. 14, 15. For precedent of a bill of costs for preparing and setting down a demurrer, see Morgan & Davey, 463; and of a demurrer overruled, *ib.* 448. As to amending the bill, pending a demurrer, see Dan. Pr. 510; and for forms of motion paper, petition of course, and summons to amend, see *ante*, Nos. 226, 227, 231. As to obtaining further time to answer, where a demurrer is overruled, see Dan. Pr. 517.

(*q*) See *ante*, No. 497, n. (*p*). For order in like case, see *Shepherd* v. *Shepherd*, M. R., 21 July, 1870, Rolls' Lib. A fee of 5*s.* higher scale, or 1*s.* lower scale, is payable on the petition: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

499.
Affidavit of service of, or of having been served with, order to set down demurrer (*r*).

The same as No. 48, or 52, *ante*.

500.
Motion paper, for costs of a demurrer not set down (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that the plaintiff may be ordered to pay his costs of the demurrer filed by him on the —— 187—, to part of the plaintiff's bill:

Or, if to the whole bill, say: to the whole of the plaintiff's bill; and also his costs of this suit; and that such bill may stand dismissed—*If there are other defendants, add:* as against the said defendant:

such demurrer not having been set down for argument; and no order having been served to amend the bill.

501.
Petition of course, for payment of costs of a demurrer not set down (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. On the —— of ——, 187—, your petitioner filed a demurrer to the whole [*Or*, to part] of the plaintiff's bill in this cause.

2. The said demurrer has not been set down for argument; and the plaintiff has not served an order for leave to amend his bill.

Your petitioner therefore humbly prays, that the plaintiff may be ordered to pay your petitioner his costs of the said demurrer.

If demurrer to the whole bill, add: and also his costs of this suit; and that such bill may stand dismissed—*If there are other defendants, add:* as against your petitioner.

And your petitioner will ever pray, &c.

502.
Petition of course, for leave to withdraw (by con-

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. On the —— of ——, 187—, your petitioner filed a demurrer

(*r*) See Dan. Pr. 512. For order overruling a demurrer, on defendant's non-appearance, see Seton, 1258, No. 13.

(*s*) See Dan. Pr. 510; Ord. XIV. 14, 15. For order in like case, see Seton, 1257, No. 11.

(*t*) For order in like case, see *Smith* v. *Allison*, M. R., 31 May, 1870, Rolls' Lib.; and see *ante*, No. 500, n. (*s*).

sent) a demurrer (*u*).

to the whole [*Or*, to part] of the plaintiff's bill in this cause: which is attached to your lordship's Court; but such demurrer has not been set down for argument [*or as may be*].

2. Your petitioner is now advised to withdraw his said demurrer.

Your petitioner therefore humbly prays, that, by consent, he may be at liberty to withdraw his said demurrer, on payment of the plaintiff's costs occasioned thereby: to be taxed [*or as may be*].

And your petitioner will ever pray, &c.

503.

Notice of motion, by a defendant who has successfully demurred, that his name may be struck out of the bill (*x*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that his name may be struck out of the record of the plaintiff's bill in this cause as a party defendant thereto; and that the plaintiff may be ordered to pay the costs of the said defendant of this application.

(*u*) See Dan. Pr. 511. For form of consent of plaintiff's solicitor, see *ante*, No. 59. For order, by consent, directing demurrer to be withdrawn, and extending time to answer, see Seton, 1259, No. 15.

(*x*) For order in like case, see *Barry* v. *Croskey*, V. C. W. 25 Nov. 1861, Reg. Lib. A. 2153 : 2 J. & H. (No. 3), 136 : 8 Jur. N. S. 10; and see Dan. Pr. 516.

CHAPTER XV.

PLEAS (*a*).

SECTION I.—FORM OF PLEAS (*b*).

504. General form of a plea (*c*). (1.) Title (*d*). (2.) Heading (*e*).

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

The plea of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

Or,

The plea of John Jones (in the bill by mistake called William Jones), the above named defendant [*Or*, one of the above named defendants], to the bill, *&c.*

Or,

The joint and several plea of A. B., and C. D. the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or,

The joint plea of A. B. and C. his wife, the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or, if they have married since she was made a defendant, say: The joint plea of A. B. and C. his wife, lately, and in the bill called, C. D., spinster [*Or*, widow] to the bill, *&c.*

(*a*) As to pleas generally, see Dan. Pr. 520—611.

(*b*) See Dan. Pr. 589—596. As to the general nature of pleas, see Dan. Pr. 520—538; and the different grounds of pleas, *ib.* 539—589. For collections of forms of pleas, see Beames on Pleas, 325—349; 2 Van Hey. 94—118; Willis, Eq. Pl. 485—586; Drewry, Eq. Pl. 146; Lewis, Eq. Drafting, 340—344; and *post*, Chap. XLVI.; and see *Index*, PLEA. As to scandal in a plea, see *ante*, No. 61, *et seq.*, and notes thereto; and as to impertinence therein, see Dan. Pr. 290, *et seq.*; 15 & 16 Vic. c. 86, s. 17; Ord. XL. 9, 11.

(*c*) See Dan. Pr. 589, 590; Braithwaite's Pr. 61. As to the form, where the plea is accompanied by a demurrer or answer, see *post*, Chap. XVIII.

(*d*) The title of the plea must agree with that of the cause, at the time the plea is filed: Dan. Pr. 589.

(*e*) Dan. Pr. 589, 590.

(3.) Protestation (*f*).

(4.) Extent (*h*).

I, A. B. (*g*) [*Or*, We, A. B., and C. D.], by protestation, not confessing all or any of the matters and things in the said bill mentioned to be true, in such manner and form as therein set forth and alleged, to all the relief, and to all the discovery, sought for and prayed against me [*Or*, us] by the said bill

Or, as to so much, or such part, of the said bill as prays that, *&c.*—*Or*, as seeks a discovery whether, *&c.*,

plead in bar to the said bill:

(5.) Statement of matter pleaded (*i*).

And for a plea say that (*Set forth the subject matter of the plea*).

(6.) Conclusion (*j*).

All which matters and things I [*Or*, we] aver to be true; and plead the same in bar to the whole of the discovery and relief [*or as may be*] sought for and prayed by the said bill; and humbly demand the judgment of this honourable Court in respect thereof (*k*).

Or, humbly pray the judgment of this honourable Court whether I [*Or*, we] ought to be compelled to make any further or other answer to the said bill; and pray to be dismissed in respect thereof with my [*Or*, our] costs and charges in this behalf sustained (*l*).

(*Name of counsel* (*m*).)

Section II.—Swearing, Filing, Setting Down, and Arguing Pleas (*n*).

505.

Summons, for time to plead (*o*).

The same as No. 544, *post*.

(*f*) See Dan. Pr. 590.

(*g*) See *Marchioness of Londonderry* v. *Baker*, 3 Giff. 129, n. (*a*); S. C. 3 De G. F. & J. 701; but pleas are frequently framed in the third person: following the forms in use previously to the Chancery Amendment Act, 1852 (15 & 16 Vic. c. 86).

(*h*) See Dan. Pr. 590; Ord. XIV. 8, 9.

(*i*) See Dan. Pr. 590—592. For forms of statements and averments, see *post*, Chap. XLVI.; and *Index*, Plea.

(*j*) See Dan. Pr. 592.

(*k*) See *Tempest* v. *Lord Camoys*, 35 Beav. 201: W. N. (1866), 16; Dan. Pr. 545, n. (*t*). For the plea in that case, see *post*, Chap. XLVI., s. 4.

(*l*) See Drew. Eq. Pl. 147.

(*m*) See Dan. Pr. 593, 597; Ord. VIII. 1. Unless required to be put in on oath, or attestation of honour, the plea need not be signed by the defendant: Dan. Pr. 597.

(*n*) See Dan. Pr. 596—604.

(*o*) *Ibid.* 598, 642. As to the time allowed to plead, see *ib.*

506.
Notice of motion, for leave to plead double (*p*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that he may be at liberty, within —— days, to file a double plea to the plaintiff's bill; namely: (*Describe the proposed plea; as thus:—*

First.—That the invention in the said bill mentioned is not useful.

Secondly.—That the said invention is not new).

507.
Motion paper, or petition of course, by plaintiff, for plea to be filed without oath, &c. (*q*).

The same as No. 552, or 553, *post*; but substitute "a plea," for "an answer."

508.
Petition of course, for the like, by defendant: plaintiff consenting (*q*).

The same as No. 554, *post*; but substitute "a plea," for "an answer."

509.
Notice of having filed a plea (*r*).

Formal parts: see ante, No. 54.
Take notice, that I have this day filed the plea [*Or*, plea and answer] of the defendant A. B., to the plaintiff's bill.

(*p*) See Dan. Pr. 524. As to double pleading, see *ib.*, 523—525.

(*q*) *Ibid.*, 597. As to when a plea must be put in on oath, or attestation of honour, and signed: unless such oath, &c., be waived by order obtained by plaintiff, or with his consent, see Dan. Pr. 594—597; Ord. XIV. 3. The order must be produced at the Record and Writ Clerks' office at the time of filing the plea: Dan. Pr. 597. Pleas are sworn and taken in the same manner as answers: *ib.* For the practice as to answers, see *ib.*, 640—661. For forms of oath and attestation, see *post*, No. 555, *et seq.*

(*r*) See Dan. Pr. 597; Ord. III. 9; XXXVII. 2. A plea must be written on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. But a joint plea and answer must be printed in the same manner as an answer: Dan. Pr. 597. As to printing answers, see *ante*, No. 195, and *post*, Chap. XVII. The plea must be signed by counsel; and be indorsed with the name, &c., of the solicitor or party filing it: Dan. Pr. 378, 379, 597; Ord. III. 2, 5. For form of such indorsement, see *ante*, No. 4, or 7. The plea is filed in the Record and Writ Clerks' office: Dan. Pr. 597. No fee is payable on filing it. As to erasures and interlineations, see *ante*, No. 9, n. (*k*).

510.

Notice of motion, to take plea off the file, for want of defendant's oath (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the plea [*Or*, plea and answer] of the defendant A. B. to the plaintiff's bill in this cause may be taken off the file of this Court for irregularity: such plea [*Or*, plea and answer] having been put in without the oath [*Or*, attestation of honour] thereto of the said defendant; and that the said defendant may be ordered to pay to the plaintiff his costs of and incident to this application.

511.

Motion paper, for inquiry as to the truth of a plea (*t*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for an order for an inquiry as to the truth of the plea of dependency of a former suit [*or as may be*], put in by the defendant A. B. to the plaintiff's bill.

A print of the bill, and the plea, accompany.

512.

Petition of course, for the like (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendant A. B.

2. On the —— of ——, 187—, the said defendant filed a plea to the said bill, and thereby averred that (*State substance of plea; as thus:*

the said bill seeks the same relief against him, and is for the same matters, as the bill filed in a certain suit of C. *v.* D. (187—. C. No. —), in this honourable Court—*or as may be*).

Your petitioner therefore humbly prays, that the usual inquiry may be made as to the truth of the said plea.

And your petitioner will ever pray, &c.

(*s*) See Dan. Pr. 596; Ord. XIV. 2.

(*t*) See Dan. Pr. 571, 600, 604; Ord. XIV. 6. For order in like case, see Seton, 1259, No. 16. As to the pleas whereof an inquiry into their truth will be directed, see Dan. Pr. 545 *et seq.*, 569 *et seq.*, 600 *et seq.*

513. Order for inquiry whether a suit in the Chancery of Lancaster, and a suit in the High Court, are for the same matter (*u*).

[*Formal parts.*]—It is ordered that an inquiry be made, whether the claim in the former suit in the Court of Chancery, in the County Palatine of Lancaster is still pending; and whether the said claim and the plaintiff's bill are for and in respect of the same matters, and for the same purposes or not; and whether the plaintiff may obtain the same relief in the said former suit as in the present suit, touching the matters in the said claim and bill mentioned, or not.

---

514. Chief Clerk's certificate of the result of the inquiry (*x*).

[*Title.*]—In pursuance of the directions given to me by the Master of the Rolls, I hereby certify that the result of the inquiry which has been made in pursuance of the order made in this cause dated the 2nd day of November, 1865, is as follows:

The plaintiff, and defendants, J. T., and E. G., have attended by their respective solicitors.

(1.) The claim in the former suit in the Court of Chancery in the County Palatine of Lancaster, in the said order mentioned, is still pending.

(2.) The said claim and the plaintiff's bill are not for and in respect of the same matters, and for the same purposes: inasmuch as the bill prays for the appointment of new trustees, and the appointment of a receiver of the rents and profits of the real estate of A. H., the testator in the said bill named, and of his outstanding personal estate: whereas the said claim does not claim the appointment of new trustees, and claims the appointment of a receiver of the rents and profits of the real estate only.

(3.) By an order made in the said former suit in the Court of Chancery of the County Palatine of Lancaster, dated the 7th August, 1861, it was ordered that J. L. should be discharged from being the plaintiff's next friend, but without prejudice to his liability for costs theretofore incurred; and it was ordered that all further proceedings in that cause (except under that order) should be stayed until a new and sufficient next friend should have been named and appointed for the plaintiff, or until the plaintiff should have obtained liberty to proceed with her suit *in formâ pauperis* without a next friend, or until the further order of the Court; but that order was to be without prejudice to the question whether the plaintiff is or will be entitled to obtain an order for liberty to proceed *in formâ pauperis* without a next friend, and also without prejudice to any other question.

On the 2nd day of February, 1865, H. H., one of the executors, and a devisee in trust, under the said A. H.'s will, died.

(*u*) *Leigh* v. *Turner*, M. R. 2 Nov. 1865, Reg. Lib. B. 2109. For the Chief Clerk's certificate of the result of the inquiry, see *post*, No. 514; and for the further order, see M. R. 8 Feb. 1866, Reg. Lib. B. 347: 14 W. R. 361; and see Dan. Pr. 549, 550, 604.

(*x*) *Leigh* v. *Turner*, M. R. at Chambers (filed 26 Jan. 1866).

The plaintiff cannot obtain the same relief in the said former suit, in the Court of Chancery in the County Palatine of Lancaster, as in the present suit, touching the matters in the said bill mentioned, unless she amends her said claim in respect of the matters before mentioned, and performs one of the conditions imposed by the said order, and amends the said claim by making the representatives of the said H. H. parties thereto.

The evidence produced consists of the claim in the said former suit in the Court of Chancery in the County Palatine of Lancaster, filed the 16th July, 1861, the said order in the last mentioned suit dated the 7th August, 1861, and the certificate of the Registrar of the said Court of Chancery in the County Palatine of Lancaster dated the 20th November, 1865.

515.

Motion paper, to dismiss bill, where inquiry as to truth of plea of a former suit is not duly prosecuted (*y*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that the plaintiff's bill may be dismissed, with costs of plea and suit:

If there are other defendants, add: as against him:

the plaintiff having neglected to obtain, within the time allowed by Cons. Ord. 14, r. 6, an order directing an inquiry as to the truth of the defendant's plea of a former suit for the same matter.

Or, if order obtained, say, after r. 6: the Chief Clerk's certificate of the result of the inquiry directed by the order dated the ——, 187—, as to the truth of the defendant's plea of a former suit for the same matter.

516.

Petition of course, for the like (*y*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

If order not obtained: 1. On the —— of ——, 187—, your petitioner filed a plea to the plaintiff's bill in this cause; and thereby averred that (*State, shortly, the substance of the plea*).

2. The plaintiff has neglected to obtain an order for an inquiry as to the truth of the said plea; and the time limited in that behalf has expired.

Or, if order obtained, say: 1. By an order in this cause, dated the —— of ——, 187—, an inquiry was directed to be made whether (*Recite the terms of the inquiry*).

2. The plaintiff has neglected to obtain the Chief Clerk's certificate of the result of the said inquiry, in pursuance of

(*y*) See Dan. Pr. 549, 600, 604; Ord. XIV. 6, 7. For order in like case, on petition, see *Mordecai* v. *Harrison*, M. R. 15 July, 1870, Rolls' Lib.

the said order; and the time limited in that behalf has expired.

Your petitioner therefore humbly prays, that the Taxing Master may be directed to tax your petitioner's costs of the said plea, and his costs of this suit; and that such costs when taxed may be paid by the plaintiff to your petitioner; and that the plaintiff's bill may stand dismissed out of this Court.

If there are other defendants, add: as against your petitioner.

And your petitioner will ever pray, &c.

517.

Petition to set down a plea, in a cause attached to a Vice-Chancellor's Court (*z*).

The same as No. 497, *ante;* but substitute "plea" for "demurrer."

518.

Petition to set down a plea in a Rolls' cause (*a*).

The same as No. 498, *ante;* but substitute "plea" for "demurrer."

(*z*) See Dan. Pr. 600. For order in like case, see *Hinde* v. *Skelton*, L. C. 23 Mar. 1865, Reg. Lib. A. 507; and see Seton, 1257, No. 10. As to setting down a plea, and as to what pleas are not usually set down for argument, see Dan. Pr. 600; Ord. VI. 4; XIV. 4—6, 10, 11, 16, 17; XXI. 9, 13; XXXVII. 13 (3); Reg. Regul. 15 Mar. 1860, rr. 1—4; and as to the service of the order on the solicitor of the opposite party, see Dan. Pr. 601. As to the papers to be left for the Judge, see Dan. Pr. 601; and see Ord. XXI. 12. Counsel's brief consists of copies of the bill and plea: Dan. Pr. 602, n. (*u*). For forms of orders on the hearing of a plea, see Seton, 1258, Nos. 12, 14. As to allowing pleas, see Dan. Pr. 604—606; saving the benefit of a plea to the hearing, *ib.* 607; ordering a plea to stand for an answer, *ib.* 607—608; overruling pleas, *ib.* 609—610; and amending pleas, and pleading *de novo*, *ib.* 610—611. For order overruling a plea, and reserving costs till the hearing, see *Morris* v. *Macaulay*, V. C. S. 13 Jan. 1869, Reg. Lib. B. 84; and for order directing a plea to stand for an answer, with liberty to except, see S. C., V. C. S., 16 Jan. 1869, Reg. Lib. B. 92. As to the costs of pleas, see Dan. Pr. 603, 605—608, 611; Ord. XIV. 16, 17. As to amending the bill, pending a plea, see Dan. Pr. 599; and for forms of motion paper, petition of course, and summons to amend, see *ante*, Nos. 226, 227, 231. For a precedent of a bill of costs for preparing and setting down a plea, see Morgan & Davey, 463; and of a plea overruled, *ib.* 448.

(*a*) See *ante*, No. 498, n. (*q*); and 517, n. (*z*).

519.
Affidavit of service of, or of having been served with, order to set down a plea (*b*).

The same as No. 48, or 52, *ante*.

520.
Summons for leave to amend bill, after plea allowed upon argument (*c*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that he may be at liberty to amend [*Or*, re-amend] his bill, by (*Specify the amendments proposed to be made*); and that the costs of this application may be costs in the cause.

521.
Motion paper, for costs of a plea not set down (*d*).

The same as No. 500, *ante;* but substitute "plea" for "demurrer"; and add: "and no undertaking given to reply to the plea."

522.
Petition of course, for the like (*d*).

The same as No. 501, *ante;* but substitute "plea" for "demurrer"; and add to paragraph 2: "nor by notice in writing undertaken to reply to the said plea."

523.
Petition of course, for leave to withdraw (by consent) a plea (*e*).

The same as No. 502, *ante;* but substitute "plea" for "demurrer."

524.
Motion paper, by plaintiff, for leave to proceed, after reversal of his outlawry pleaded by defendant (*f*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that (*If costs not paid, say:* upon payment by him to the defendant A. B., of his costs occasioned by the said defendant's plea of outlawry of the plaintiff,) the plaintiff may proceed with this suit as if the defendant's plea of the plaintiff's outlawry had not been filed: such outlawry having been reversed.

(*b*) See Dan. Pr. 601. For order overruling a plea, on defendant's non-appearance, see Seton, 1258, No. 13.

(*c*) See Dan. Pr. 340, 345, 606, 689; Ord. XIV. 16.

(*d*) See Dan. Pr. 603; Ord. XIV. 17, 18. For order in like case, see Seton, 1257, No. 11.

(*e*) See Dan. Pr. 601. For order to withdraw a plea, see Seton, 1259, No. 15.

(*f*) See Dan. Pr. 54, n. (*v*); but *quære* whether any such application is necessary: see *ib.* For order in like case, see Seton, 1259, No. 17.

CHAPTER XVI.

DISCLAIMERS (*a*).

525. General form of disclaimer (*b*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

The answer and disclaimer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint of the above named plaintiff.

Or,

The joint and several answer and disclaimer of A. B. and C. D., the [*Or*, two of the] above named defendants, to the bill of complaint of the above named plaintiff.

In answer to the said bill, I, A. B. [*Or*, we, A. B., and C. D.], say as follows:

I [*Or*, We] have not and do not claim, and never had or claimed to have, any right or interest in any of the matters in question in this suit; and I [*Or*, we] disclaim all right, title and interest, legal and equitable, in any of the said matters; and I [*Or*, we] say that if I [*Or*, we] had been applied to by the plaintiff before the filing of his bill, I [*Or*, we] should have disclaimed all such right, title and interest; and I [*Or*, we] submit that the bill ought to be dismissed as against me [*Or*, us] with costs.

(*Name of counsel* (*c*).)

526. The like (*d*).

Proceed, as in last Form, to as follows:

Before the institution of this suit, I [*Or*, we] offered to the plaintiff to disclaim any right or interest that I [*Or*, we, or either of us] had in any of the matters in question in this suit; and I

(*a*) As to disclaimers generally, see Dan. Pr. 612—617; and for forms of disclaimer, see 2 Van Hey. 69—71; Willis, Eq. Pl. 615; Lewis, Eq. Drafting, 346.

(*b*) See Dan. Pr. 614.

(*c*) The disclaimer must be signed by counsel, and by the defendant: Dan. Pr. 614; Ord. VIII. 1; and if put in without oath, or attestation of honour, the defendant's signature must be attested: Dan. Pr. 614. For form of attestation, see post, No. 555.

(*d*) Dan. Pr. 614.

[*Or*, we] do not now claim any right, title or interest, legal or equitable, in any of the said matters; and I [*Or*, we] submit that I [*Or*, we] ought to be paid my [*Or*, our] costs of this suit.

(*Name of counsel.*)

527.

Motion paper, by plaintiff, for leave for disclaimer to be filed without oath, &c. (*e*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave for the defendant A. B. to put in his answer and disclaimer to the plaintiff's bill without oath.

Or, if defendant is a peer, say: without attestation of honour.

528.

Petition of course, by plaintiff, for the like (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendant A. B.: who has appeared thereto; and desires to put in a disclaimer to the said bill.

2. Your petitioner is willing that such disclaimer shall be put in without oath.

Or, if defendant is a peer, say: without attestation of honour.

Your petitioner therefore humbly prays, that the defendant A. B. may be at liberty to put in the said disclaimer without oath

Or, without attestation of honour

accordingly.

And your petitioner will ever pray, &c.

529.

Petition of course, by defendant, for the like: plaintiff consenting (*f*).

Title—and address to the M. R.: see ante, No. 56.

The humble (*g*) petition of the defendant A. B.

Showeth as follows:

The plaintiff lately filed his bill in this cause against your petitioner: who has appeared thereto; and desires to put in a disclaimer to the said bill without oath.

Or, without attestation of honour.

Your petitioner therefore humbly (*g*) prays, that, by consent, he may be at liberty to put in such disclaimer without oath

Or, without attestation of honour

accordingly.

And your petitioner will ever pray, &c.

(*e*) See Dan. Pr. 614. The order must be produced at the Record and Writ Clerks' office at the time the disclaimer is filed. Disclaimers are sworn and taken in the same manner as answers: as to which, see Dan. Pr. 646, *et seq.* For forms of oath and attestation, see *post*, Nos. 555, *et seq.*

(*f*) See Dan. Pr. 614. For form of consent, see *ante*, No. 59.

(*g*) Where the petitioner is a peer, omit "humble."

530. Notice of having filed disclaimer (*h*).

Formal parts: see ante, No. 54.

Take notice, that I have this day filed the disclaimer [*Or*, answer and disclaimer] of the defendant A. B., to the plaintiff's bill.

(*h*) See Dan. Pr. 614; Ord. III. 9; XXXVII. 2. A disclaimer must be signed by counsel; and be sworn, filed, and printed, and an office copy taken, in the same manner, and within the same time, as an answer: Dan. Pr. 614. For the practice as to answers, see *post*, Chap. XVII. As to the costs of disclaiming defendants, see Dan. Pr. 616, 617; and for forms of decree against disclaiming defendants in foreclosure suits, see Seton, 395.

CHAPTER XVII.

ANSWERS (*a*).

Section I.—Form of Answers (*b*).

1. *Model Form* (*c*).

531. Model form of answer. (1.) Title (*d*).

In Chancery.

(*Reference to the record.*)

Between John Lee . . . Plaintiff,

and

James Styles and Henry Jones, . . . Defendants.

(*a*) As to answers, generally, see Dan. Pr. 618—686.

(*b*) See Dan. Pr. 633—640. As to the general nature of answers, see Dan. Pr. 618—632; as to severance by co-defendants, and the costs of separate answers, *ib.* 633, 634; Ord. XL. 12; and as to the joinder of several defences, see Dan. Pr. 687—689; and *post*, Chap. XVIII. Every answer must be divided into paragraphs, numbered consecutively: each paragraph containing, as nearly as may be, a separate and distinct statement or allegation: 15 & 16 Vic. c. 86, s. 14; Ord. XV. 1; Dan. Pr. 634. The answer, and every schedule or document annexed thereto, must be written bookwise, or printed, on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 1. As to such paper see *ante*, No. 195. Under special circumstances, however, answers and schedules not so written have been allowed to be filed, on application to the Court: Dan. Pr. 645, n. (*c*). Dates and sums occurring in the answer should be expressed by figures, instead of words: Dan. Pr. 645. For the mode of referring in the answer to schedules and exhibits thereto, see *ante*, No. 9, n. (*q*). As to erasures and alterations, see Dan. Pr. 645; and *ante*, No. 9, n. (*k*); and for form of consent to file answer, notwithstanding omissions or unauthenticated alterations, see *post*, No. 594. As to scandal in an answer, see *ante*, No. 61, *et seq.*, and notes thereto; and as to impertinence therein, see 15 & 16 Vic. c. 86, s. 17; Ord. XL. 9, 11; Dan. Pr. 290—292, 661.

(*c*) Ord. XV. 1, provides that answers may be in a form similar to the form set out in Schedule C. thereto, with such variations as the nature and circumstances of each particular case may require. The form so scheduled is that above set forth. For model forms of bill and interrogatories, corresponding to the model form of answer, see *ante*, Nos. 154 and 359. For collections of forms of answers, see 2 Van Hey. 1—71; Willis, Eq. Pl. 587—617; Whitworth, Eq. Prec. 591—612; Drewry, Eq. Pl. 148—151; Lewis, Eq. Drafting, 345—349; and *post*, Chap. XLVI.; and see *Index*, Answer.

(*d*) The answer must be intituled in the cause, so as to agree with the names

The answer of James Styles, one of the above named defendants, to the bill of complaint of the above named plaintiff. (2.) Heading (*e*).

In answer to the said bill I, James Styles, say as follows:— (3.) Statements and allegations (*f*).

1. I believe that the defendant Henry Jones does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned.

2. Such charge was created by an indenture, dated the 1st of November, 1850, made between myself of the one part, and the said defendant Henry Jones of the other part, whereby I granted and conveyed the said farm and premises, subject to the mortgage made by the said indenture of the 1st of May, 1850, unto the defendant Henry Jones, for securing the sum of £2,000, and interest at the rate of £5 per centum per annum; and the amount due thereon is the said sum of £2,000, with interest thereon from the date of such mortgage.

3. To the best of my knowledge, remembrance, and belief, there is not any other mortgage, charge, or incumbrance, affecting the aforesaid premises.

James Styles (*h*).

M. N.
(*Name of Counsel* (*g*).)

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of the parties as they appear in the bill at the time the answer is filed: Dan. Pr. 634.

(*e*) For other forms of headings, see *post*, Nos. 532—543.

(*f*) For other forms of statements and allegations, see *post*, Chap. XLVI.

(*g*) As to counsel's signature, see Ord. VIII. 1; Dan. Pr. 636. There is no objection to the same counsel signing the separate answers of co-defendants: Dan. Pr. 636, n. (*q*). For forms of motion paper and petition to add counsel's name, where inadvertently omitted, see *post*, Nos. 598, 599; and for form of notice of motion to take answer off the file for want of the signature, see *post*, No. 639.

(*h*) The engrossment or print of the answer must be signed by the defendant putting it in, unless an order has been obtained to take it without signature. Where an answer is put in by guardian or committee, his signature is alone required; and though he is also a defendant, and puts in the answer in both characters, he need only affix his signature to the answer once. It is prudent, but not essential, to sign each sheet of the answer. Each schedule, if any, should also be signed. If the answer is put in upon oath, attestation of honour, or affirmation, the signature must be affixed or acknowledged in the presence of the person before whom it is sworn, &c.; and he must sign each schedule, as well as the jurat or affirmat: see Dan. Pr. 637: Ord. XV. 5. For form of attestation to the signature to an answer put in without oath, &c., see *post*, No. 555.

2. *Other Forms of Headings* (*i*).

532. Sole defendant, or co-defendant, to original and (or) supplemental bill, or bill amended before answer.

The answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint (*k*) of the above named plaintiff.

Or, to the supplemental bill of complaint of the above named plaintiff.

Or, to the original bill of complaint, and also to the supplemental bill of complaint, of the above named plaintiff.

In answer to the said bill, I, A. B., say as follows:—

---

533. Co-defendants.

The joint and several answer of A. B., and C. D., the [*Or*, two of the] above named defendants, to the bill, *&c.*

In answer to the said bill we, A. B., and C. D., say as follows:—

---

534. Attorney-General (*l*).

The answer of Sir R. P. C., knight, Her Majesty's Attorney-General, one of the above named defendants, to the bill, *&c.*

In answer to the said bill, I, Sir R. P. C., say as follows (*m*):—

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535. Secretary of State in Council for India (*n*).

The answer of (*Name of Secretary*), the Secretary of State in Council for India, one of the above named defendants, to the bill, *&c.*

In answer to the said bill, I (*Name of Secretary*), say as follows (*m*):—

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536. Joint-Stock Company, Limited (*o*).

The answer of the above named defendants, the Ebbw Vale Company, Limited, to the bill, *&c.*

In answer to the said bill, we, the Ebbw Vale Company, Limited, say as follows:—

(*i*) As to the headings of answers, see Dan. Pr. 634, 635; and as to the headings of further answers, and answers to amended bills, see *post*, Nos. 628—631.

(*k*) This form is sufficient where the answer is put in to a bill amended before answer: see Dan. Pr. 678.

(*l*) As to suits against the Attorney-General, see Dan. Pr. 121—129.

(*m*) The answer in this case is put in without oath; and an order to dispense with the oath is not necessary: Dan. Pr. 638.

(*n*) For form of attestation, see *post*, No. 556.

(*o*) See Braithwaite's Pr. 50. As to suits against corporations and joint stock companies, see Dan. Pr. 132—136.

537.

The answer of W. H. M., official manager of the L. & C. A. Company, one of the above named defendants, to the bill, *&c.*

Official manager (*p*).

In answer to the said bill, I, W. H. M., official manager of the said L. & C. A. Company, on behalf of myself and of the said company, say as follows:—

538.

The joint and several answer of A. B., and of C. D., an infant,

Or, a person of unsound [*Or*, weak] mind not so found—*or as may be*

by the said A. B. [*Or*, by E. F.] his guardian, the [*Or*, two of the] above named defendants, to the bill, *&c.*

Adult, and infant, or person of unsound or weak mind (*q*).

In answer to the said bill, we, the said A. B., and C. D., say as follows:—

539.

The answer of A. B., an infant,

Or, a person of unsound [*Or*, weak] mind not so found—*or as may be*

by C. D., his guardian, one of the above named defendants, to the bill, *&c.*

Infant, or person of unsound or weak mind, by guardian (*q*).

In answer to the said bill, I, A. B., say as follows:—

540.

The joint answer of A. B., and C. his wife, the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or, if they have married since she was made a defendant, say: The joint answer of A. B. and C. his wife, lately, and in the bill called C. D., spinster [*Or*, widow], to the bill, *&c.*

Husband and wife jointly (*r*).

In answer to the said bill, we, A. B. and C. his wife, say as follows:—

541.

The answer of C. B., one of the above named defendants, and the wife of (the defendant) A. B., to the bill, *&c.*

Wife separately, under an order (*s*).

In answer to the said bill, I, C. B., answering separately from my husband, in pursuance of an order of this honourable Court, dated the —— day of ——, 187—, authorising me so to do, say as follows:—

(*p*) See Braithwaite's Pr. 49.

(*q*) See Dan. Pr. 635. As to suits against infants, see Dan. Pr. 145—158; and idiots, lunatics, and persons of weak mind, *ib.* 158—162. As to the form and effect of the answer of an infant, see Dan. Pr. 153, 154, 741, 742; and of an idiot, &c., *ib.* 161, 742.

(*r*) See Dan. Pr. 168, 635.

(*s*) *Taylor* v. *Forbes* (1863, T. No. 71). As to separate answers by married women, see Dan. Pr. 164—168; and see *post*, Nos. 550, 551.

542.

Misnomer (*t*).

The answer of John Jones (in the bill by mistake called William Jones), the above named defendant [*Or*, one of the above named defendants], to the bill, *&c.*

In answer to the said bill, I, John Jones, say as follows :—

543.

Executors of deceased defendant, under order of revivor (*u*).

In Chancery.

(*Reference to the record.*)

(*Title as in bill; but add* since deceased, *after name of deceased defendant.*)

The joint and several answer of A. B. and C. D. (the executors of the above named defendant E. F., and against which executors this suit has been revived by an order dated the —— day of ——, 187—), to the bill of complaint of the above named plaintiff.

In answer, *&c.*

Section II.—Swearing, Filing, and Printing Answers (*x*).

1. *Further time to answer.*

544.

Summons for further time to plead, answer, or demur (*y*).

Formal parts: see ante, No. 60.

on the part of the defendant A. B., that he may have one month's [*or as may be*] further time to put in a plea, answer, or demurrer, not demurring alone, to the plaintiff's (amended) bill; and that the costs of this application may be costs in the cause.

(*t*) As to the correction of a misnomer in an answer, see Dan. Pr. 634.

(*u*) See Braithwaite's Pr. 50, 51; and *Martin* v. *Purnell*, there cited; see also Dan. Pr. Chap. XXXIII.

(*x*) See Dan. Pr. 640—661.

(*y*) See Dan. Pr. 411, 517, 518, 642—644, 657, 668, 670. For orders in like case, see *McDonogh* v. *Gregory*, M. R., at Chambers, 25 Mar. 1870, Reg. Lib. B. 771; *Sharman* v. *Green*, V. C. M., at Chambers, 25 Mar. 1870, Reg. Lib. B. 760; *Worcester Park Buildings Co.* v. *Hector*, V. C. J., at Chambers, 1 April, 1870, Reg. Lib. B. 800; *Moore* v. *Miller*, V. C. S., at Chambers, 11 April, 1870, Reg. Lib. B. 763; and to put in a voluntary answer only, see *Cardwell* v. *Watts*, M. R., at Chambers, 21 Mar. 1864, Reg. Lib. A. 56; *Hall* v. *Ordish*, V. C. W., at Chambers, 15 Mar. 1865, Reg. Lib. A. 471; *Higgins* v. *Underwood*, V. C. S., at Chambers, 1 Aug. 1870, Reg. Lib. A. 2103. For affidavit of service of the summons, see *ante*, No. 50. The above form is applicable as well to the case where a defendant is as where he is not interrogated. As to the time allowed a defendant to answer, see Dan. Pr. 640—644; Ord. XXXVII. 8; and see 15 & 16 Vic. c. 80, s. 26; 15 & 16 Vic. c. 86, s. 13. As to the time allowed to demur, see Dan. Pr. 507; to plead, *ib.* 598; and to answer after exceptions submitted to, *ib.* 668—670.

545.

Summons for leave to file an answer, &c., where the time has expired (*z*).

Formal parts: see ante, No. 60.

on the part of the defendant A. B., that, notwithstanding the time limited has expired, he may be at liberty, on or before the —— of ——, 187—, to put in a plea, answer, or demurrer, not demurring alone,

Or, a voluntary answer—*or as may be*,

to the plaintiff's bill; and that the costs of this application may be costs in the cause.

546.

Affidavit in support of application for further time, where defendant is interrogated (*a*).

Formal parts: see ante, No. 9.

1. Interrogatories for the examination of the defendant A. B. in answer to the plaintiff's bill in this cause were delivered on the —— of ——, 187—.

2. *Show, succinctly, in numbered paragraphs, that due diligence has since been used to put in an answer.*

3. It is essential to the due preparation and completion of the said answer that one month's [*or as may be*] further time should be granted to the said defendant to put in the same. The pending application by the said defendant for such further time is not intended for the purpose of delay or vexation.

4. *Show means of knowledge.*

547.

The like, where defendant is not interrogated (*a*).

Formal parts: see ante, No. 9.

1. The plaintiff's bill in this cause was filed on the —— of ——, 187—.

2. A copy of the said bill was served on the defendant A. B. on the —— of ——, 187—; and he appeared thereto on the —— of ——, 187—.

3. The plaintiff has not delivered interrogatories for the examination of the said defendant in answer to the said bill.

4. *Show, succinctly, in numbered paragraphs, that defendant is advised, and deponent believes, it is necessary to put in a voluntary answer, and that due diligence has been used to prepare and file the same.*

5. It is essential (*&c.: Continue as in par.* 3 *of* No. 546, *to the end of that Form*).

(*z*) See Dan. Pr. 641, 657. For affidavit of service of the summons, see *ante*, No. 50. For order for leave to file a voluntary answer to an amended bill, see *Little* v. *Hope*, M. R., at Chambers, 11 Jan. 1869, Reg. Lib. B. 29; and to file a voluntary answer after replication, see *Hodyes' Distillery Co.* v. *Doulton*, V. C. M., at Chambers, 27 Jan. 1869, Reg. Lib. A. 92 (by consent).

(*a*) See Dan. Pr. 642. If the affidavit is made by the defendant instead of his solicitor, or by both, the form must be varied accordingly.

2. *Leave for Husband or Wife to defend separately.*

548.
Notice of motion, by husband, for leave to answer separately from his wife (*b*).

Formal parts: see ante, No. 55.

on behalf of the defendant A. B., that he may be at liberty to answer the plaintiff's bill, and defend this suit, separately from the defendant C. B., his wife; and that no attachment or other process may issue against him in consequence of his said wife neglecting to answer the said bill.

If in custody for want of their joint answer, add: and that upon filing his separate answer to the said bill, and paying or tendering the costs of contempt, he may be discharged out of the custody of the Keeper of the City of London Prison at Holloway [*or as may be*], as to his contempt in not answering the said bill.

549.
Affidavit in support (*b*).

In Chancery.

(*Title, and reference to the record.*)

I, A. B., of (*residence and addition*), one of the above named defendants, make oath and say as follows:—

1. On the —— of ——, 187—, I entered an appearance for myself, and for the defendant C. B., my wife, to the plaintiff's bill in this cause.

Or, for myself only, to the plaintiff's bill in this cause; and an appearance thereto for the defendant C. B., my wife, has since been entered by her—*Or*, by the plaintiff—*or as may be.*

2. A copy of the interrogatories filed by the plaintiff for the examination of myself and my said wife in answer to the said bill was delivered to me [*Or*, to my solicitor] on the ——of ——, 187—; but I have not yet put in an answer to the said bill.

If in custody for want of answer, say: 3. On the —— of ——, 187—, I was attached by the sheriff of ——, for a contempt of this honourable Court in not filing the answer of myself and my said wife to the said bill; and I am now in the custody of the Keeper of the City of London Prison at Holloway [*or as may be*] for such contempt.

Show special grounds for the application; as thus: (4.) My said wife has for —— years last past lived, and is now living, separate and apart from me; and to the best of my knowledge, information, and belief she is now residing at (*State where*). My said wife is not in any manner under my influence or control.

Or, (4.) My said wife is living with me; but she obstinately refuses to join with me in answering the said bill, or in

(*b*) For order in like case, see Seton, 1255, No. 5. For the cases in which the husband may obtain an order to defend separately, and as to his liability on default, see Dan. Pr. 163, 164, 423; and see *ante*, Nos. 351—353.

otherwise defending this suit; and I am wholly unable to persuade or induce her to answer the said bill. I am not in any manner conniving or colluding with her in such her refusal.

(5.) The facts hereinbefore stated are within my own knowledge.

550.

Motion paper, by wife, for leave to defend separately (*c*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant C. B., the wife of the defendant A. B., for leave for her to (plead, answer, or demur to the plaintiff's bill, and) defend this suit separate from him.

551.

Petition of course, for the like (*c*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant C. B., wife of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against the said A. B. and your petitioner; and the said A. B. has appeared thereto for himself and your petitioner.

Or, and the said A. B. has appeared for himself only, and your petitioner has appeared for herself, to the said bill—*or as may be.*

2. *State the special grounds for the order; as in the following examples:*

(*a*) The matters in question in this suit arise in right of your petitioner; and she and her said husband A. B. have separate interests therein.

(*b*) The matters in question in this suit arise in right of your petitioner; and she and her said husband A. B. are living separate and apart.

(*c*) Your petitioner's said husband A. B. is a person of weak understanding—*If so:* and by an order dated the —— day of ——, 187—, E. F. was appointed his guardian to defend this suit.

(*d*) Your petitioner resides at (*State where*), within the jurisdiction of this honourable Court; but her said husband A. B. resides at (*State where*), out of the said jurisdiction.

Your petitioner therefore humbly prays, that she may be at liberty to (plead, answer, or demur to the plaintiff's bill and) defend this suit separate from her husband the defendant A. B.

And your petitioner will ever pray, &c.

(*c*) See Dan. Pr. 164. For the cases in which a wife may obtain an order to defend separately, see Dan. Pr. 164—166, 639. For orders in like case on motion, see Seton, 1254, No. 3; and on petition, see *Miller* v. *Miller*, M. R., 13 May, 1870, Rolls' Lib.; *Wood* v. *Mercer*, M. R., 7 June, 1870, Rolls' Lib.; and see *ante*, Nos. 356—358.

3. *Dispensing with Oath, &c.*

552.

Motion paper, by plaintiff, for answer to be filed without oath, &c. (*d*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave for the defendant A. B. to put in an answer [*Or*, plea and answer] to the plaintiff's bill, without oath—*If so:* or signature.

Or, if by guardian or committee, say: without the oath (or signature) of C. D., the guardian—*or*, committee—of the said defendant.

Or, if defendant is a peer, say: without attestation of honour (or signature).

Or, in the case of a corporation aggregate, say: without the common seal of the said defendants being affixed thereto.

553.

Petition of course, by plaintiff, for the like (*d*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendant A. B.: who has appeared thereto.

2. The said defendant desires to put in an answer [*Or*, plea and answer] to the said bill without oath—*If so:* or signature:

Or, without the oath (or signature) of C. D., his guardian—*or*, committee:

Or, if defendant is a peer, say: without attestation of honour (or signature):

Or, in the case of a corporation aggregate, say: without the common seal of the said defendants being affixed thereto:

to which your petitioner is willing to consent.

Your petitioner therefore humbly prays, that the said defendant may be at liberty to put in the said answer [*Or*, plea and answer] without oath (or signature)

Or, without attestation of honour (or signature)

Or, without the said common seal

accordingly.

And your petitioner will ever pray, &c.

(*d*) See Dan. Pr. 153, n. (*c*), 638, 639, 640. For order in like case, see Seton, 1254, No. 2. Where the answer is to be put in by guardian, the guardian must be appointed by order, before the application is made: Dan. Pr. 639. For orders on petition at the Rolls to put in answer without oath,

554.
Petition by defendant for answer to be filed without oath, &c.: plaintiff consenting (*e*).

Title—and address to the M. R.: see ante, No. 56.

The humble (*f*) petition of the defendant A. B.

If so: an infant—*Or*, a person of unsound mind—by C. D., his guardian.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner: who has appeared thereto.

2. Your petitioner is now desirous to put in an answer [*Or*, a plea and answer] to the said bill without oath—*If so:* or signature.

Or, if by guardian or committee, say: without the oath (or signature) of C. D., his guardian—*or*, committee.

Or, if defendant is a peer, say: without attestation of honour (or signature).

Or, in the case of a corporation aggregate, say: without the common seal of your petitioners being affixed thereto.

Your petitioner therefore humbly (*f*) prays, that, by consent of the plaintiff, he may be at liberty to put in the said answer [*Or*, plea and answer] without oath (or signature)

Or, without attestation of honour (or signature)

Or, without the said common seal

accordingly.

And your petitioner will ever pray, &c.

555.
Attestation to defendant's signature, where the oath only is dispensed with (*g*).

Witness to the signature of the defendant A. B.

C. D., of (*residence and addition*).

see *Peach* v. *Barnes*, 17 Dec. 1869; without oath or signature, see *Coulthard* v. *Coulthard*, 22 June, 1870; without oath or signature of guardian of infants, see *Mainwaring* v. *Coyney*, 11 May, 1870; and without the common seal of a railway company, see *Ridsdale* v. *Atlantic and Great Western Railway Co.*, 24 Mar. 1870; and for defendants, a company in liquidation, to answer without the common seal, and upon the affirmation of the official liquidator, see *Getty* v. *Ridley*, 29 Oct. 1868: all in Rolls' Lib.

(*e*) See note to No. 552, *ante*. The consent of the plaintiff's solicitor must be subscribed to the petition. For form of such consent see *ante*, No. 59.

(*f*) Where the petitioner is a peer, omit "humble."

(*g*) The signature to an answer taken without oath must be attested by the defendant's solicitor, or by some other person competent to be a witness; the attestation should be written on the left-hand side of the signature: Dan. Pr. 639.

556.

Attestation to the signature of the Secretary of State in Council for India (*h*).

Signed by (*Name of Secretary*), at a meeting of the Council of India, held on the —— day of ——, 187—, in the presence of,
A. B., Assistant Secretary of State [*or as may be*].

557.

Attestation to the seal of a corporation aggregate (*i*).

The seal of the defendants, the (*Name of corporation*), was affixed hereto by order this —— day of —— 187—, in the presence of,
A. B., Secretary [*or as may be*].

4. *Oaths and Jurats—Attestation of Honour and Declarat—Declarations and Affirmats.*

558.

Ordinary forms of oath and jurat: one defendant (*k*).

To the defendant: Is that your name and handwriting?
You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B. { Sworn (*If another defendant joins in the answer, add:* by the defendant A.B.,) at (*State where, and when, as in* No. 12, *ante*),

before me (*&c.: see ante*, No. 12).

559.

The like: two or more defendants sworn together (*l*).

To each defendant: Is that your name and handwriting?
To both or all: You do severally swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the

(*h*) See Dan. Pr. 638. An order dispensing with the Secretary's oath is unnecessary. For form of heading of the answer, see *ante*, No. 535.

(*i*) See Dan. Pr. 638, n. (*i*).

(*k*) *Ibid.* 637, *et seq.*; Braithwaite's Pr. 387, 388; Braithwaite's Oaths in Chan. 52. As to the persons before whom pleas, answers, disclaimers, affirmations, and attestations of honour may be sworn, affirmed, or attested, and their fees, see Dan. Pr. 646, *et seq.*; and *ante*, No. 40, and notes thereto. As to the mode of administering the oath, and the position and material contents of the jurat, and the signature thereto, and to any schedules, see *ante*, No. 12, and notes thereto: which apply equally to answers as to affidavits. As to re-swearing an answer, see *ante*, No. 12, n. (*x*).

(*l*) Where all the defendants joining in the same answer are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered: Braithwaite's Oaths in Chan. 52, n. (*a*).

acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B.
C. D. } Sworn by both [*Or all*] the defendants [*Or, if other defendants join in the answer, say:* by the defendants A. B. and C. D.], at (*State where, and when, as in* No. 12, *ante*),

before me (*&c.*: *see ante*, No. 12).

560.

Oath of a blind defendant, and jurat, where the officer reads to him the answer (*m*).

To the defendant: You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B.
[*Or*,
The mark
×
of A. B.] } Sworn by the defendant A. B., at (*State where, and when, as in* No. 12, *ante*), before me: I having first truly, distinctly, and audibly read over the contents of this answer to the said defendant: he being blind; and he appeared to understand the same—*If a marksman, add:* and made his mark hereto in my presence.

(*Signature and style of office: see ante*, No. 12.)

561.

Oaths and jurat, where a witness reads the answer to a blind defendant (*n*).

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this answer to the defendant A. B.; and that he appeared to understand the same, and signed his name [*Or*, made his mark] to this answer in your presence—So help you God.

To the defendant: You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B.
[*Or*,
The mark
×
of A. B.
———
Witness to the signature [*Or*, mark] } Sworn by the defendant A. B., at (*State where, and when, as in* No. 12, *ante*): C. D., the witness to the signature [*Or*, mark] of the said defendant having been first sworn that he had truly, distinctly, and audibly read over the contents of this answer to the said defendant: he being blind; and that

(*m*) See Dan. Pr. 648; and see *ante*, No. 14, n. (*c*), as to the mode of taking the affidavit of a blind man, or marksman: which applies also to his answer.

(*n*) *Ibid.*; and see Braithwaite' Pr. 396; Braithwaite's Oaths in Chan. 63.

of the defendant A. B.:
C. D.,
of (*Residence and addition* (*o*)).

the said defendant appeared to understand the same, and signed his name [*Or*, made his mark] thereto, in the presence of the said C. D.:
before me (*&c.: see ante*, No. 12).

562.

Ordinaryform of oath of a deaf and dumb defendant, and jurat (*p*).

To the defendant: Is that your name and handwriting?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B. { Sworn at (*State where, and when, as in* No. 12, *ante*), before me (*&c.: see ante*, No. 12).

563.

Oaths and jurat, where a foreigner answers in English, through an interpreter (*q*).

To the interpreter: Is that your name and handwriting? (*r*).

You do swear that you well understand the French language [*Or other language of the defendant*]; and that you have truly, distinctly, and audibly interpreted the contents of this answer to the defendant A. B.; and that you will truly and faithfully interpret to him the oath about to be administered to him—So help you God.

To the defendant, through the interpreter: Is that your name and handwriting?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B.
—
C. D.,
of (*Residence and addition* (*s*).

Sworn at (*State where, and when, as in* No. 12, *ante*), by the defendant A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he had truly, distinctly, and audibly interpreted the contents of this answer to the defendant A. B.; and that he would truly and faithfully interpret to the said defendant the oath about to be administered to him:
before me (*&c.: see ante*, No. 12).

(*o*) The attestation should be written near the jurat: Dan. Pr. 649, n. (*r*).

(*p*) See Dan. Pr. 650; Braithwaite's Pr. 395; Braithwaite's Oaths in Chan. 62. The procedure in this case is the same as that adopted in taking the affidavit of a deaf and dumb person: as to which see *ante*, No. 16, n. (*f*).

(*q*) See Dan. Pr. 649; Braithwaite's Pr. 389, 390; Braithwaite's Oaths in Chan. 55.

(*r*) It seems desirable, but is not, in practice, considered essential, that the interpreter should sign the answer: see Dan. Pr. 649; Braithwaite's Oaths in Chan. 55, n. (*f*).

(*s*) If the interpreter does not sign the jurat, his place of residence and

564.
Motion paper, for leave for defendant to answer in a foreign language, and for appointment of translator (*t*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., for leave to put in his answer to the plaintiff's bill in the French [*or as may be*] language: he being a foreigner, and not understanding English; and that C. D., of (*residence and addition* (*u*)), may be appointed to translate the said answer into English, and be sworn to the truth thereof; and that such translation may be annexed to and filed with the said answer.

565.
Petition of course, for the like (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner: who has appeared thereto.

2. Your petitioner lives at (*State where*); and, not understanding the English language, desires to put in his answer to the said bill in the French [*or as may be*] language.

Your petitioner therefore humbly prays, that he may be at liberty to put in his said answer in the French [*or as may be*] language; and that C. D. (*Continue as in* No. 564, *ante, to the end*).

And your petitioner will ever pray, &c.

566.
Oaths of defendant and interpreter, in like case (*v*).

To the interpreter: Is that your name and handwriting (*w*)?

You do swear that you well understand the French language [*or other language of the defendant*]; and that you will truly and faithfully interpret to the defendant A. B. the oath about to be administered to him—So help you God.

To the defendant, through the interpreter: Is that your name and handwriting?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

[Sworn

addition must be stated in the jurat, immediately after the first occurrence of his name.

(*t*) See Dan. Pr. 649; Braithwaite's Pr. 391, 392.

(*u*) It is usual, but not essential, to appoint a notary for this purpose: see Braithwaite's Oaths in Chan. 58, 59.

(*v*) See Dan. Pr. 649.

(*w*) See *ante*, No. 563, n. (*r*).

A. B.
—
C. D.,
of (*Residence and addition* (*x*).)

Sworn at (*State where, and when, as in* No. 12, *ante*), by the defendant A. B. through the interpretation of C. D.: the said C. D. having been first sworn that he would truly and faithfully interpret to the said defendant A. B. the oath about to be administered to him:

before me (*&c.: see ante*, No. 12).

567.

Verification of a translation, into English, of an answer in a foreign language (*y*).

To the translator: Is that your name and handwriting?

You do swear that you well understand the French language [*or other language in which the answer is written*]; and that the above written is a true translation into the English language of the answer of A. B. in the French [*or as may be*] language thereunto annexed—So help you God.

E. F.

E. F., of (*residence and addition; as:* Change Alley, Cornhill, in the City of London, Notary Public (*z*)), was sworn at (*State where, and when, as in* No. 12, *ante*), that the above written is a true translation into the English language of the answer of A. B. in the French [*or as may be*] language thereunto annexed, and affixed together at the top thereof, under the (notarial) seal of the said E. F., with his name thereto subscribed:

before me (*&c.: see ante*, No. 12).

568.

Oaths and jurat to answer of an infant, or person of unsound or weak mind, by guardian, where the guardian joins as a co-defendant (*a*).

To the guardian: Is that your name and handwriting?

You do swear that so much of this answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

You do also swear that so much of this answer as concerns the defendant A. B. you believe to be true—So help you God.

C. D. (*b*).

Sworn at (*State where, and when, as in* No. 12, *ante*), by the defendant C. D., for himself, and also as guardian of the defendant A. B., pursuant to an order dated the —— day of ——, 187— (*c*):

before me (*&c.: see ante*, No. 12).

(*x*) See *ante*, No. 563, n. (*s*).

(*y*) See Dan. Pr. 649. The translation must be annexed to the answer: see the terms of the jurat.

(*z*) See *ante*, No. 564, n. (*u*).

(*a*) Dan. Pr. 639, 656; Braithwaite's Pr. 393, 394. As to the assignment of guardians to infants, &c., see *ante*, No. 108, *et seq.*

(*b*) The guardian need only affix his signature to the answer once: Dan. Pr. 637.

(*c*) The order here referred to is the order appointing the guardian *ad litem*.

569.
Oath and jurat to like answer, where the guardian does not so join (*d*).

To the guardian: Is that your name and handwriting?
You do swear that so much of this answer of the defendant A. B. as concerns the said defendant you believe to be true—So help you God.

C. D. (*e*). { Sworn at (*State where, and when, as in* No. 12, *ante*), by C. D., as guardian of the defendant A. B., pursuant to an order dated the —— day of ——, 187— (*f*):
before me (*&c.: see ante*, No. 12).

570.
Oath and jurat to answer of an idiot, &c., and his committee (*g*).

To the committee: Is that (*Continue as in* No. 568, *ante, to the end of the second oath*).

C. D. (*h*). { Sworn at (*State where, and when, as in* No. 12, *ante*), by the defendant C. D., for himself, and also as committee of the defendant A. B.:
before me (*&c.: see ante*, No. 12).

571.
Oath of a marksman, and jurat, where the officer reads to him the answer (*i*).

To the defendant: Is that your mark?
You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

The mark × of A. B. { Sworn by the defendant A. B., at (*State where, and when, as in* No. 12, *ante*), before me: I having first truly, distinctly, and audibly read over the contents of this answer to the said defendant, and he appeared to understand the same, and made his mark hereto in my presence.

(*Signature and style of office: see ante*, No. 12).

572, 573.
Oaths and jurat, where a witness reads the answer to a marksman (*i*).

To the witness: Is that your name and handwriting?
You do swear that you have truly, distinctly, and audibly read over the contents of this answer to the defendant A. B., and that he appeared to understand the same, and made his mark to this answer in your presence—So help you God.

[*To the*

(*d*) See Dan. Pr. 639, 656; Braithwaite's Pr. 393.
(*e*) The signature of the guardian is alone required: Dan. Pr. 637.
(*f*) See *ante*, No. 568, n. (*c*).
(*g*) See Dan. Pr. 639; Braithwaite's Oaths in Chan. 61, n. (*l*).
(*h*) The committee need only sign his name once.
(*i*) See Dan. Pr. 648; Braithwaite's Pr. 388, 389.

To the defendant: Is that your mark?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

The mark
×
of A. B.

Witness to the mark of the said A. B.:
C. D.,
of (*Residence and addition*).

Sworn by the defendant A. B., at (*State where, and when, as in* No. 12, *ante*): C. D., the witness to the mark of the defendant A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this answer to the said defendant; and that the said defendant appeared to understand the same, and made his mark thereto, in the presence of the deponent C. D.:

before me (*&c.: see ante*, No. 12).

---

574. Oath and jurat, to separate answer of a married woman, under an order (*j*).

To the defendant: Is that your name and handwriting?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true—So help you God.

A. B.

Sworn at (*State where, and when, as in* No. 12, *ante*), by the defendant A. B.—*If the order to answer separately is produced, add:* pursuant to an order dated the —— day of ——, 187—, by which she is at liberty to answer separate from her husband (*k*):

before me (*&c.: see ante*, No. 12).

---

575. Oath of a Presbyterian, under 1 & 2 Vic. c. 105, and jurat (*l*).

To the defendant: Is that your name and handwriting?

To be uttered by him: I, A. B., do solemnly and sincerely declare that (*State in what form, and with what ceremony, an oath will be binding; as:*

holding up my right hand, and declaring to the truth of

(*j*) See Dan. Pr. 656; Braithwaite's Pr. 397.

(*k*) *Taylor* v. *Forbes* (1863, T. No. 71). If the order is not produced to the officer, no reference should be made to it in the jurat; but in such case, the order must be produced at the Record and Writ Clerks' office, on the answer being presented for filing: Dan. Pr. 656.

(*l*) See 1 & 2 Vic. c. 105, s. 1; Dan. Pr. 648; Braithwaite's Pr. 400; Roscoe on Evid, 163; but see Braithwaite's Oaths in Chan. 39, where it is stated that though answers have been taken under this Act, in the cases there cited, Lord Langdale, M. R., directed the Clerks of Records and Writs not to swear defendants to answers thereunder.

this my answer, as I shall answer to God at the great day of judgment,)

is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare, that so much of this my answer as concerns my own acts and deeds is true to the best of my knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named I believe to be true (*Repeat the binding form; as:*

as I shall answer to God at the great day of judgment).

A. B. { Sworn by the defendant A. B., pursuant to the Act 1st & 2nd Victoria, Chapter 105, at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: see ante*, No. 12).

576.

Attestation of honour and declarat (*m*).

To the defendant: Is that your lordship's name and handwriting?

You do declare upon your honour that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true.

A. { Declared upon honour, at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: see ante*, No. 12).

577.

Declaration and affirmat, in the case of a Quaker or Moravian (*n*).

To the defendant: Is that your name and handwriting?

To be uttered by him: I, A. B., do solemnly, sincerely, and truly declare and affirm, that so much of this my answer as concerns my own acts and deeds is true to the best of my knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named I believe to be true.

A. B. { Affirmed by the defendant A.B.: he being one of the people called Quakers (*o*) [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be* (*p*)]: at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: see ante*, No. 12).

(*m*) See Dan. Pr. 639, 648; Braithwaite's Pr. 397, 398; Braithwaite's Oaths in Chan. 65.

(*n*) See 9 Geo. IV. c. 32, s. 1; 3 & 4 Will. IV. c. 49; Dan. Pr. 648; Roscoe on Evid. 164; Braithwaite's Pr. 398; Braithwaite's Oaths in Chan. 65.

(*o*) *Taylor* v. *Forbes* (1863, T. No. 71).

(*p*) Where it appears by the answer that the defendant is a Quaker, &c., he need not be described as such in the jurat.

578.

Declaration and affirmat, in the case of an Ex-Quaker or Ex-Moravian, under 1 & 2 Vic. c. 77 (*q*).

To the defendant: Is that your name and handwriting?

To be uttered by him: I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that so much of this my answer as concerns my own acts and deeds is true to the best of my knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named I believe to be true.

A. B. { Affirmed by the defendant A. B., pursuant to the Act 1st & 2nd Victoria, chapter 77: he having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be* (*r*)]: at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: see ante*, No. 12).

579.

The like, of a Separatist, under 3 & 4 Will. IV. c. 82 (*s*).

To the defendant: Is that your name and handwriting?

To be uttered by him: I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare, that so much of this my answer as concerns my own acts and deeds is true to the best of my knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named I believe to be true.

A. B. { Affirmed and declared by the defendant A. B., pursuant to the Act 3rd & 4th William the Fourth, chapter 82: he being a member of the religious sect called Separatists (*t*): at (*State where, and when, as in* No. 12, *ante*):

before me (*&c.: ante*, No. 12).

(*q*) See 1 & 2 Vic. c. 77; Dan. Pr. 648; Roscoe on Evid. 164; Braithwaite's Pr. 398; Braithwaite's Oaths in Chan. 66.

(*r*) If it appears by the answer that the defendant is an ex-Quaker, &c., he need not be described as such in the jurat.

(*s*) See 3 & 4 Will. IV. c. 82, s. 1; Dan. Pr. 648; Roscoe on Evid. 165; Braithwaite's Pr. 399. The Common Law Procedure Act, 1854 (17 & 18 Vic. c. 125), s. 20, in terms allows an affirmation, instead of an oath, to be substituted for an "affidavit or deposition," only: and does not therefore, it is presumed, apply to an answer.

(*t*) If this appears by the answer, it need not be repeated here.

5. *Taking Answer under a Commission* (*u*).

580.
Motion paper, for the commission (*v*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., for leave to sue out a commission to take his answer [*or as may be*] to the plaintiff's bill, at (*State where; and if defendant is to be sworn in a foreign language, add:* and that the commissioners be authorised to swear an interpreter to interpret the oath to be administered to the defendant thereunder).

581.
Petition of course, for the like (*v*).

Title—and address to the M.R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner.

2. Your petitioner has appeared to the said bill; and is desirous to put in his answer [*or as may be*] thereto.

3. Your petitioner is resident at (*State where*), out of the jurisdiction of this honourable Court; and there is no person resident at that place, or within a convenient distance thereof, who, under the statutes in this behalf, can lawfully swear your petitioner to his said answer [*or as may be*].

Your petitioner therefore humbly prays, that he may be at liberty to sue out a commission to take the said answer—*or as may be.*

If the defendant is to be sworn in a foreign language, add: and that the commissioners may be authorised to swear an interpreter to interpret the oath to be administered to your petitioner thereunder.

And your petitioner will ever pray, &c.

582.
Notice to plaintiff, to furnish his commissioners' names (*v*).

Formal parts: see ante, No. 54.

Take notice, that you are hereby required to furnish me with the names of commissioners on the part of the plaintiff, to insert in the commission to take the answer [*or as may be*] of the defendant, A. B. to the plaintiff's bill, under the order dated ——, 187—(*Order to sue out commission*).

(*u*) As to when a commission to take an answer out of the jurisdiction may still be necessary, see Dan. Pr. 650; and as to a second commission, *ib.* 655.

(*v*) See Dan. Pr. 651.

583.

Notice of names of plaintiff's commissioners (*w*).

Formal parts: see ante, No. 54.

Take notice, that L. M. and N. O., are the names of the commissioners on the plaintiff's part to be inserted in the commission to take the answer [*or as may be*] of the defendant A. B.; and that notice of executing such commission is to be given to the said L. M., who resides at (*State where*), and to the said N. O., who resides at (*State where*), or either of them.

584.

Motion paper, that plaintiff may nominate his commissioners within a limited time (*w*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that the plaintiff may be ordered, within two days after notice of the order hereon, to furnish the defendant's solicitor with the names of two commissioners on the plaintiff's part to be inserted in the commission to take the defendant's answer [*or as may be*], pursuant to the order dated ——, 187— (*Order to sue out commission*); or, in default thereof, that the defendant may have the said commission directed to his own commissioners only.

585.

Petition of course, for the like (*w*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. By an order dated the —— of ——, 187—, it was ordered that (*Recite order for the commission*).

2. Your petitioner has since required the plaintiff to furnish him with the names of commissioners on the plaintiff's part to be inserted in the said commission; but he has hitherto neglected to do so.

Your petitioner therefore humbly prays, that the plaintiff may be ordered (*Continue as in* No. 584, *ante, to the end*).

And your petitioner will ever pray, &c.

586.

Præcipe for the commission (*x*).

In Chancery.

(*Reference to the record.*)

A. v. B. { Seal commission to take answer [*or as may be*] of the defendant A.B. at the suit of C. D.: directed to E. F., G. H., L. M., and N. O.

If plaintiff has named commissioners, add: Six days' notice to plaintiff's commissioners, L. M., and N. O., or either of them.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the commission: see ante*, No 4 *or* 7.)

(*w*) See Dan. Pr. 651.

(*x*) *Ibid.* 652. For the practice as to preparing and suing out the commission, see *ib.*

587.
The commission (*y*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert the commissioners' names* (*z*),) *greeting:*

Whereas C. D., plaintiff [*Or, if so:* C. D. and another—*Or,* others—plaintiffs], lately exhibited his—[*Or,* their] bill of complaint in our High Court of Chancery, against A. B. (*a*):

And whereas the said defendant A. B. hath been duly served with a copy of the said bill, having an indorsement thereon commanding him to appear before us in our said Chancery at a certain day now past, and to observe what our said Court should direct:

If so: And whereas interrogatories for the examination of the said defendant in answer to the said bill have been duly delivered to him:

And whereas the said defendant hath appeared to the said bill; and desires to put in his answer [*or as may be*] to the said bill:

Know ye, that we have given unto you, any three or two of you, full power and authority to take the answer [*or as may be*] of the said defendant to the said bill (*b*): And therefore we command you, any three or two of you, that at such certain day and place as you shall think fit, you go to the said defendant, if he cannot conveniently come to you, and take his answer (*c*), to the said bill on his corporal oath upon the Holy Evangelists (*d*), to be administered by you, any three or two of you: the said answer

(*y*) See Dan. Pr. 652. This form has been altered from Veal's Pr. 51, to meet the changes in practice which have since taken place.

(*z*) Where the plaintiff nominates commissioners, those of the defendant are inserted before those of the plaintiff. The christian and surnames only, without the residences and descriptions, are stated: Veal's Pr. 51. There must be at least four commissioners named, and two at least must act: *ib.*

(*a*) The names of any other defendants than the defendant whose answer, &c., is to be taken, need not be mentioned: Veal's Pr. 52.

(*b*) If a plea and answer, insert here: "on his corporal oath, upon the Holy Evangelists; or his plea to the said bill on his corporal oath: to be administered by you, any three or two of you:" see Veal's Pr. 56; but see n. (*d*) *infra*, as to a peer, or a Jew.

(*c*) If a plea and answer, proceed thus: "or plea, respectively, as aforesaid, to the said bill: the same being distinctly," *&c.*, as above, omitting the intervening words: see Veal's Pr. 55.

(*d*) If the defendant is entitled to the privilege of peerage, substitute "upon his protestation of honour," for "his corporal oath upon the Holy Evangelists;" and if the defendant is a Jew, the words "upon the Holy Evangelists" may be left out: Dan. Pr. 652. Where the defendant is a Quaker, or other person exempted from taking an oath by statute, the writ should direct the commissioners to take the answer on his solemn declaration or affirmation: Dan. Pr. 638, n. (*h*), 652. For form of commission to take the answer of a Quaker, see Veal's Pr. 54; of a corporation, *ib.* 57; and of an infant, by his guardian, *ib.* 60; and see Hinde, 232, *et seq.* As to the course, where the defendant is a Gentoo, see Dan. Pr. 652.

being distinctly and plainly written upon paper (*e*); and when you shall have so done, you are to send the same closed up, under the seals of you, any three or two of you, unto us in our said Chancery without delay, wheresoever it shall then be, together with this writ.

Witness (*&c.: Conclude as in* No. 313, *ante*).

If the plaintiff has furnished commissioners' names, add, at the foot of the writ: "Six days' notice to be given to the said (*Insert names of the commissioners of the plaintiff, or the one to whom he desires notice to be given*)."

588.

Indorsement on the commission (*f*).

By the Court.

(*Add name, &c., of solicitor or party issuing the commission: see ante,* No. 4, *or* 7).

589.

Notice to plaintiff's commissioners, of meeting to execute commission (*g*).

We whose names are hereunto subscribed, having received a commission issuing out of the High Court of Chancery, to us and others directed, to take the answer [*or as may be*] of A. B., to the bill of complaint of C. D. [*If so:* and another—*Or*, others] in a cause depending in the said Court, hereby give you notice, that we intend to execute the said commission on —— the —— day of ——, 187—, between the hours of —— and —— of the clock in the ——noon, at (*State where*): at which time and place you may be present, if you please, to see the same taken. Dated this —— day of ——, 187—.

E. F.
G. H.

To
Mr. L. M., and Mr. N. O.,
Plaintiff's commissioners.

590.

Oaths, declarations, jurats, and affirmats (*h*).

To the defendant: Have you heard this your answer read? and do you exhibit it as your answer to the bill of complaint of C. D. —*If so:* and another—*Or*, others?

(*e*) The paper should be of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. Answers have, however, been allowed by the Court to be filed, under special circumstances, though not so written: see Dan. Pr. 645, n. (*c*).

(*f*) See Dan. Pr. 652.

(*g*) Hinde, 234; and see Dan. Pr. 652, 653. Where the plaintiff has not named commissioners, no notice need be given: *ib.* For the manner of executing the commission, see *ib.*

(*h*) The oath, attestation of honour, or affirmation to be administered by the commissioners is the same in form as when the answer is taken in England: including a case where the defendant is blind, deaf and dumb, a foreigner, or

591.
Caption (*i*).

This answer [*or as may be*] was taken, and the above named A. B., the defendant, was duly sworn to the truth thereof on the Holy Evangelists [*or as may be*], at (*State where; as:* the house of W. G., situate at, *&c.*), on —— the —— day of ——, 187—, by virtue of the commission hereunto annexed.

Before us,

E. F.
G. H. } Commissioners.

592.
Return (*k*).

The execution of this commission appears in the schedule [*Or*, schedules] hereto annexed.

E. F.
G. H. } Commissioners.

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6. *Filing and Printing Answer.*

593.
Notice of filing answer (*l*).

Formal parts: see ante, No. 54.

Take notice, that I have this day filed the answer [*Or*, plea and answer—*Or*, answer and disclaimer] of the defendant A. B. to the plaintiff's bill.

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a married woman: see Dan. Pr. 648—650. For forms of oaths, jurats, attestations of honour, affirmations, and affirmats, see *ante*, No. 558, *et seq.* As to the signatures of the defendant and the commissioners to the answer, and authentication of alterations, see Dan. Pr. 654.

(*i*) See Dan. Pr. 654; Hinde, 235. This caption should be written at the foot of the answer; and be varied according to the nature of the case: Dan. Pr. 654; and see Form in Hinde, 236.

(*k*) See Dan. Pr. 654. The answer and caption should be annexed to the commission; and the return be indorsed on the writ, and signed by two commissioners. All the documents should then be folded together, in a convenient size and form, and bound round with tape or string: at the crossings of which the seals of the commissioners should be affixed; they should then sign their names in the vacant spaces, near their respective seals, enclose the whole in an envelope, and direct and return the same to the defendant's solicitor, to be filed. The oath of a messenger is not now required: Dan. Pr. 654; 15 & 16 Vic. c. 86, s. 25. As to the course, where a commission is irregularly executed, see Dan. Pr. 655.

(*l*) Dan. Pr. 658: Ord. III. 9; XXXVII. 2. The answer is filed at the Record and Writ Clerks' office. If put in without oath, or attestation of honour, or signature, or corporate seal, the order dispensing therewith must be produced; and if put in by guardian, the order appointing such guardian must also be produced, unless it is noticed in the jurat: Dan. Pr. 657. For the cases in which the answer will not be filed except under the authority of an order, see Dan. Pr. 657.

594.

Consent to answer being filed, notwithstanding omissions, or unauthenticated alterations (*m*).

I consent to this answer being filed, notwithstanding (*Describe the defect; as thus:*

the omission of "John" before "Jones" in the title [*Or*, heading] thereof;

Or, the omission of the word "county" in the jurat thereto;

Or, the officer before whom the said answer has been sworn has not authenticated the interlineation of the words "which was" between the 3rd and 4th lines of the 10th paragraph thereof);

and without the said answer being re-sworn.

C. D., Plaintiff in person.

[*Or*, Plaintiff's solicitor—*Or*, agent].

——, 187—.

595.

Petition of course, for the like: plaintiff consenting (*n*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner: who has appeared, and sworn his answer thereto.

2. Since the said answer was sworn the defect hereinafter mentioned has been discovered therein.

Your petitioner therefore humbly prays, that, by consent of the plaintiff, the said answer may be filed, notwithstanding (*Describe defect: see ante*, No. 594).

And your petitioner will ever pray, &c.

596.

Notice of motion to file answer as that of A. only: though purporting to be the answer of A. and B. (*o*).

Formal parts: see ante, No. 55.

on the part of the defendant B. A., that a certain paper writing purporting to be the joint and several answer of the defendants B. A., and C. B., to the bill of complaint of the plaintiff [*or as may be*], and to which answer the defendant B. A. only has yet been sworn, may be received and filed as the answer of the defendant B. A. only to the said bill.

597.

Petition of course, for the like: plaintiff consenting (*p*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant B. A.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner, and against C. B.: both of whom appeared to the said bill.

2. The joint and several answer of your petitioner and the said C. B. to the said bill has since been prepared, and sworn to by

(*m*) See Dan. Pr. 645. The consent should be indorsed on the answer.

(*n*) See Dan. Pr. 645. For form of consent to the petition, see *ante*, No. 59.

(*o*) See Dan. Pr. 636, 683.

(*p*) *Ibid.* For form of consent of plaintiff's solicitor, see *ante*, No. 59.

your petitioner; but the said C. B. now refuses to join in the said answer [*or other reason*].

Your petitioner therefore humbly prays, that, by consent of the plaintiff, the said answer may be received and filed as the answer of your petitioner only to the said bill.

And your petitioner will ever pray, &c.

598.

Motion paper, by defendant, to add counsel's name to his answer (*q*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., for leave to add to the answer filed by him on the —— of —— 187—, to the plaintiff's bill, the name of "——" esquire, the counsel by whom the draft of such answer has been settled and signed: such name having been inadvertently omitted.

599.

Petition of course, for the like (*q*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause against your petitioner: who appeared thereto; and on the —— of ——, 187—, filed his answer to the said bill.

2. Since the said answer was filed, your petitioner has discovered that the name of "——," esquire, the counsel by whom the draft of such answer has been settled and signed on his behalf, has been inadvertently omitted to be put to the engrossment thereof.

Your petitioner therefore humbly prays, that he may be at liberty to add to his said answer the name of the said counsel.

And your petitioner will ever pray, &c.

600.

Certificate, verifying written copy answer, for the printer (*r*).

I hereby certify the above to be correct, and proper to be printed.

X. Y.,
C. R. & W.

(*q*) See Dan. Pr. 637, 683; Ord. VIII. 1. For notice of motion by plaintiff to take the answer off the file, for want of counsel's signature, see *post*, No. 639.

(*r*) See Dan. Pr. 658. For the practice as to printing answers, see Dan. Pr. 658—661; Ord. 6 Mar. 1860; and for directions as to the manner of printing answers, and correcting the proof sheets, see *ante*, No. 195. As to swearing and filing a printed answer, see Dan. Pr. 659; Ord. 6 Mar. 1860, r. 5. As to obtaining office copies of the schedules, see Dan. Pr. 660; Ord. 6 Mar. 1860, r. 10.

601.
Certificate, verifying printed copy (*s*).

I hereby certify that this print is a true copy of the copy of the answer certified by the Record and Writ Clerk as correct and proper to be printed.

E. F., defendant in person.
[*Or*, defendant's solicitor—*Or*, agent.]

602.
Attachment, for not leaving such copy (*t*).

Præcipe and Indorsement: The same as Nos. 312, and 314, *ante*; but describe the contempt as: "For not leaving with the Clerk of Records and Writs, pursuant to the 3rd rule of the General Order of the Court dated 6th March, 1860, a printed copy of the answer of the said A. B., filed the ——, 187—."
The Writ: The same as No. 313, *ante*.

603.
Demand of office copy answer (*u*).

Formal parts: see ante, No. 54.
Take notice, that I require to be furnished with an official and certified printed copy of the answer of the defendant A. B. to the plaintiff's bill; and I hereby undertake to pay the proper charges for the same.

604.
Præcipe for sealing such copy (*x*).

In Chancery.
(*Reference to the record.*)
A. *v.* B. Seal an official and certified printed copy of the answer of the defendant A. B., at the suit of C. D.
(*Name, &c., of solicitor or party applying: see ante*, No. 4, *or* 7.)

605.
Certificate, verifying such copy (*y*).

I hereby certify the above to be a correct copy of the record in my custody.

X. Y.,
C. R. & W.

(*s*) See Dan. Pr. 659; Ord. 6 Mar. 1860, r. 3.
(*t*) See *Bloxsome* v. *Chichester*, 2 De G. J. & S. 444; S. C., *nom. Bloxam* v. *Chichester*, 34 Beav. 76: 11 Jur. N. S. 480; Dan. Pr. 659, n. (*q*). For attachments in like case, see *Brearey* v. *Green*, 22 Jan. 1864, Reg. Lib. A. 48; *Hart* v. *Cuthbert*, 17 Mar. 1864, Reg. Lib. A. 486.
(*u*) See Dan. Pr. 659; Ord. 6 Mar. 1860, r. 4.
(*x*) See Dan. Pr. 659. The copy must be stamped with a 5*s*. Chancery fee fund stamp: Ord. 6 Mar. 1860, r. 6. As to the charge for the copy, se *ib.* r. 7; and as to obtaining additional printed copies, see *ib.* rr. 8, 9; Dan. Pr. 660.
(*y*) See Dan. Pr. 659; Ord. 6 Mar. 1860, r. 6.

Section III.—Exceptions to Answers (*z*).

606.
General form of exceptions for insufficiency (*a*).
(1.) Title (*b*).
(2.) Heading (*b*).
(3.) Body (*c*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Exceptions taken by the above named plaintiff to the insufficient answer of the above named defendant A. B., to the bill of complaint of the said plaintiff [*or as may be* (*b*)].

1. For that the said defendant A. B. hath not set forth to the best of his knowledge, information, and belief whether (*Point out, specifically, the interrogatories, or parts of the interrogatories, which are unanswered, by separate exceptions applicable to each part*).

In all which particulars the said plaintiff excepts to the said answer of the said A. B., as evasive, imperfect, and insufficient; and humbly prays that the said A. B. may be compelled to put in a further and better answer to the said bill.

(*Name of Counsel* (*d*).)

607.
Notice of having filed the exceptions (*e*).

Formal parts: see ante, No. 54.

Take notice, that I have this day filed exceptions for insufficiency to the answer of the defendant A. B. to the plaintiff's bill.

(*z*) As to exceptions for insufficiency to an answer, see Dan. Pr. 661—676; Ord. XVI. 1, 3—19. As to exceptions for scandal in an answer, see *ante*, No. 61, *et seq.*, and notes thereto; and as to impertinence in an answer, see Dan. Pr. 291—293, 661.

(*a*) See Dan. Pr. 661, 664, 665; Braithwaite's Pr. 126, 127. As to the time from which an answer will be deemed sufficient, see Dan. Pr. 666, 667, 685, 686; Ord. XVI. 6, 7, 16; XXXIII. 12 (3); XXXVII. 13 (2). For forms of exceptions for insufficiency, see 2 Van Hey. 133—138; and *post*, Chap. XLVI.; and for precedents of bills of costs on exceptions, see Morgan & Davey, 448, 464.

(*b*) See Dan. Pr. 664.

(*c*) *Ibid.* 665.

(*d*) *Ibid.* 664; Ord. XVI. 1; and see *post*, No. 612.

(*e*) See Dan. Pr. 666; Ord. XVI. 3; XXXVII. 2. The exceptions must be written on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. The exceptions must be signed by counsel: Ord. XVI. 1; and be indorsed with the name, &c., of the solicitor or party filing the same: Ord. III. 2, 5; Dan. Pr. 378, 379, 666. For form of such indorsement, see *ante*, No. 4, or 7. The exceptions are filed at the Record and Writ Clerks' office: Dan. Pr. 666. No fee is payable on filing.

608.
Summons for time to file exceptions(*f*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that the time limited by the 16th of the Consolidated Orders, rule 6, for the plaintiff to file exceptions to the sufficiency of the answer of the defendant A. B. to the plaintiff's bill, may be extended to the —— day of ——, 187— ; and that the costs of this application may be costs in the cause.

609.
Notice of motion, or summons, for leave to file exceptions, where time expired (*g*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff, that, notwithstanding the time limited by the 16th of the Consolidated Orders, rule 6, has expired, the plaintiff may be at liberty, on or before the —— day of ——, 187— (*h*), to file exceptions for insufficiency to the answer of the defendant A. B. to the plaintiff's bill ; and that the costs of this application may be costs in the cause.

610.
Petition of course, for the like, by consent (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed his bill in this cause against the defendant A. B.: who has appeared thereto, and has put in his answer to interrogatories filed by your petitioner for his examination in answer to the said bill.

2. Your petitioner is advised to file exceptions for insufficiency to the said answer; but the time limited for so doing by the 16th of the Consolidated Orders, rule 6, has expired.

Your petitioner therefore humbly prays, that, by consent of the said defendant, he may be at liberty on or before the —— day of —— 187—, to file exceptions for insufficiency to the said answer.

And your petitioner will ever pray, &c.

611.
Summons, for leave to amend exceptions (*k*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that he may be at liberty to amend the exceptions filed by him for insufficiency to the answer of the defendant A. B. to the plaintiff's bill, by (*State the amendments proposed*); and that the costs of this application may be costs in the cause.

(*f*) See Dan. Pr. 667; Ord. XVI. 6; Ord. XXXVII. 17. For orders in like case, see *Kay* v. *Hargreaves*, V. C. S. at Chambers, 6 Dec. 1865, Reg. Lib. A. 2279; *Whitehead* v. *Haynes*, V. C. J. at Chambers, 14 Jan. 1869, Reg. Lib. B. 8 (by consent); *Sculthorpe* v. *Tipper*, V. C. M. at Chambers, 9 May, 1870, Reg. Lib. A. 1179.

(*g*) See Dan. Pr. 666; Ord. XVI. 6. For order in like case, on summons, see *Fowler* v. *Druce*, V. C. S. at Chambers, 7 Mar. 1864, Reg. Lib. A. 383.

(*h*) See Dan. Pr. 667, n. (*u*).

(*i*) *Ibid.* 667. For form of consent, see *ante*, No. 59.

(*k*) See Dan. Pr. 665.

612.
Notice of motion, to take exceptions off the file, for irregularity (*l*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that the exceptions filed by the plaintiff for insufficiency to the answer of the said defendant to the plaintiff's bill, may be taken off the file of this Court, for irregularity (*Describe the irregularity; as thus:* the said exceptions not being, nor purporting to be, signed by counsel); and that the plaintiff may be ordered to pay the said defendant his costs occasioned by the said exceptions, and of this application.

613.
Summons, for time to submit to exceptions (*m*).

Formal parts: see ante, No. 60.
on the part of the defendant A. B., that the time limited by the 16th of the Consolidated Orders, rule 8, for the applicant to submit to the exceptions for insufficiency, which have been filed to his answer to the plaintiff's bill, may be extended to the —— day of—— 187—; and that the costs of this application may be costs in the cause.

614.
Submission to exceptions (*n*).

Formal parts: see ante, No. 54.
Take notice, that the defendant A. B. hereby submits to the exceptions for insufficiency, which have been filed by the plaintiff to his answer to the plaintiff's bill.

615.
Certificate of the filing of exceptions (*o*).

In Chancery.
(*Name of Judge, and reference to the record.*)
(*Short title of cause.*)
These are to certify, that exceptions to the answer of the above named defendant A. B. in this cause for insufficiency were regularly filed on the —— day of ——, 187—, as appears by my book. Dated this —— day of ——, 187—.
X. Y.,
C. R. & W.

616.
Request to set down exceptions (*p*).

I request that the exceptions referred to in this certificate may be set down for hearing.
A. B.
Plaintiff's [*Or*, Defendant's] solicitor.
——, 187—.

(*l*) See Dan. Pr. 664; Ord. XVI. 1.

(*m*) See Dan. Pr. 668, n. (*c*); Ord. XVI. 8; Ord. XXXVII. 17. For order in like case, see *Mayer* v. *Frith* (1859, M. 164).

(*n*) See Dan. Pr. 667, 668; Ord. XVI. 9, 15, 18. As to the costs payable on submission, see Dan. Pr. 668, 674; Ord. XL. 13. As to obtaining further time to answer after submission, see Dan. Pr. 668, 670. For form of summons for further time, see *ante*, No. 544.

(*o*) See Braithwaite's Pr. 415; Dan. Pr. 669.

(*p*) The request must be indorsed on the Record and Writ Clerk's certificate:

617.

Notice to plaintiff, to set down exceptions within four days, in a case of election (*q*).

Formal parts: see ante, No. 54.

Take notice, that, pursuant to the 6th rule of the 42nd Consolidated Order, you are hereby required to set down, within four days from the service of this notice, the exceptions for insufficiency filed by you to the answer of the defendant A. B. to the plaintiff's bill.

618.

Notice of having set down exceptions (*r*).

Formal parts: see ante, No. 54.

Take notice, that I have this day set down for hearing the exceptions for insufficiency to the answer of the defendant A. B. to the plaintiff's bill.

619.

Affidavit of service of, or of having been served with, the notice (*s*).

The same as No. 47, or 52, *ante*.

620.

Notice of having set down old exceptions (*t*).

Formal parts: see ante, No. 54.

Take notice, that I have this day set down again for hearing the exceptions for insufficiency, filed the —— day of ——, 187—, to the answer of the defendant A. B. to the plaintiff's bill; and that the plaintiff requires a further answer to (*Specify the par-*

Reg. Regul. 15 Mar. 1860, r. 5; Dan. Pr. 669; 13 & 14 Vic. c. 35, s. 27. As to the time allowed for, and mode of setting down exceptions, see Dan. Pr. 669; Ord. XVI. 10, 11, 12; XLII. 6; Reg. Regul. 15 Mar. 1860, rr. 1, 5.

(*q*) See Dan. Pr. 669, 719; Ord. XLII. 6; and see *post*, No. 685, *et seq.*

(*r*) See Dan. Pr. 669; Ord. XVI. 10. As to the papers to be left for the Judge, see Dan. Pr. 669; and see Ord. XXI. 12. Counsel's brief will consist of printed copies of the bill and answer, and brief copies of the exceptions, and of the interrogatories to the answers to which the exceptions are taken: Dan. Pr. 669, n. (*s*). As to the hearing generally, see Dan. Pr. 669; Ord. XVI. 4, 14, 18; XXI. 13. As to the costs of exceptions allowed or overruled, see Dan. Pr. 675, 676; Morgan & Davey, 27—29, 448, n., 464. For form of order on the argument of exceptions, see Seton, 1256, No. 8; and where plaintiff does not appear, *ib.* 1257, No. 9; *Hay* v. *Burdett*, M. R., 17 Mar. 1864, Reg. Lib. A. 559. For order allowing exceptions with costs, see *Wayte* v. *Spooner*, M. R., 8 Nov. 1869, Reg. Lib. B. 2654; and giving a month's time to answer, see *Easey* v. *Webber*, V. C. M., 20 July, 1870, Reg. Lib. A. 2063.

(*s*) See Dan. Pr. 669; and *Hay* v. *Burdett*, *ubi sup.* Where the plaintiff makes default at the hearing, it seems an affidavit of the receipt by defendant of the notice is unnecessary: see Dan. Pr. 669, n. (*u*).

(*t*) See Dan. Pr. 671; Ord. XVI. 13, 16, 17. The Judge should be furnished with a copy of the further answer, in addition to the former papers: Dan. Pr. 671. As to the further hearing, see Dan. Pr. 672; and as to filing new exceptions, see *ib.*

ticular exception or exceptions to which a further answer is required; as thus: each of the said exceptions—*Or*, the first and second of the said exceptions).

621.
Interrogatories for the defendant's examination, after a third insufficient answer (*u*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Interrogatories exhibited before his lordship the Master of the Rolls,

Or, his honour the Vice-Chancellor Sir John Stuart—*or as may be*,

for the examination of the above named defendant A. B. to the points to which the answer of the said defendant to the bill of complaint of the above named plaintiff is held to be insufficient.

1. Does not, *&c.*
2. What are, *&c.*

(*Name of counsel.*)

622.
Memorandum of allowance thereof (*x*).

——, 187—.

(*Short title.*)

The Master of the Rolls [*Or*, Vice-Chancellor ——] has settled and allowed these interrogatories.

R. M., Chief Clerk.

623.
Notice of having left the interrogatories (*y*).

Formal parts: see ante, No. 54.

Take notice, that I have this day left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——] interrogatories for the examination of the defendant A. B. to the points to which his answer to the plaintiff's bill is held to be insufficient.

(*u*) See Dan. Pr. 673; 15 & 16 Vic. c. 80, s. 26. The interrogatories must be signed by counsel; and be written on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16; Dan. Pr. 673. As to such paper, see *ante*, No. 195. For the practice as to examining a defendant on interrogatories after a third insufficient answer, see Dan. Pr. 672—674; Ord. XVI. 19. In *Danell* v. *Page*, W. N. (1868), 225: 16 W. R. 1080, V. C. S., the defendant was ordered to attend before the examiner, and be examined *vivâ voce*, with liberty to the plaintiff to attend by counsel and cross-examine him; see also *Rishton* v. *Grissell*, 14 W. R. 790, V. C. W.; and Dan. Pr. 672, n. (*y*).

(*x*) See Dan. Pr. 673. The memorandum should be written in the margin of the first page of the interrogatories: *ib.*

(*y*) See Dan. Pr. 673.

624.
Examination of the defendant, in answer to the interrogatories (*z*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

The answer and examination of the above named defendant A. B. to the interrogatories exhibited before his lordship (*Continue as in* No. 621, *ante, to the end of the heading*).

1. To the first interrogatory, this examinant saith that, *&c.*
2. To the second interrogatory, this examinant saith that, *&c.*

A. B.

625.
Certificate of examination on interrogatories (*a*).

I certify that the foregoing examination has been taken by the Master of the Rolls [*Or,* Vice-Chancellor ——].

R. M., Chief Clerk.

626.
Notice that the examination has been filed (*b*).

Formal parts: see ante, No. 54.

Take notice, that the interrogatories for the examination of the defendant A. B. to the points to which his answer to the plaintiff's bill has been held to be insufficient, and his answer and examination to the said interrogatories, have been filed at the Record and Writ Clerks' office.

627.
Notice of motion for discharge of examinant from custody (*c*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that he may be discharged out of the custody of the Keeper of the City of London prison at Holloway [*or as may be*], touching his contempt in not putting in a sufficient answer to the plaintiff's bill, on payment or tender of the costs of such contempt: a sufficient answer having now been filed to the said bill.

(*z*) See Dan. Pr. 673. Counsel's signature is unnecessary: *ib.* 674, n. (*l*); Braithwaite's Pr. 45.

(*a*) See Dan. Pr. 674.

(*b*) *Ibid.;* Ord. XXXV. 31.

(*c*) See Dan. Pr. 674. As to the costs, see *ib.*

Section IV.—Further Answers.—Answers to Amended Bills (*d*).

628.

Title and heading of a further answer to original bill (*e*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

The further answer

Or, second further answer

of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint of the above named plaintiff.

In answer, *&c.*

629.

The like, of an answer to a bill amended before answer (*e*).

Title, &c., as in No 628.

The answer of A. B., the above, &c., to the amended bill

Or, to the secondly—*Or*, thirdly—amended bill

of complaint of the above named plaintiff.

In answer, *&c.*

630.

Title and heading of an answer to amendments and exceptions (*e*).

Title, &c., as in No. 628.

The further answer of A. B., the above, *&c.*, to the bill of complaint of the above named plaintiff, and the answer of the same defendant to the amended bill of complaint of the said plaintiff.

In answer, *&c.*

631.

The like, of a further answer to original and first amended bill, and of answer to secondly amended bill (*e*).

Title, &c., as in No. 628.

The further answer of A. B., the above, *&c.*, to the original and firstly amended bill of complaint of the above named plaintiff, and the answer of the same defendant to the secondly amended bill of complaint of the said plaintiff.

In answer, *&c.*

(*d*) For the practice as to further answers, and answers to amended bills, and the time allowed for putting in the same, see Dan. Pr. 670—679; Ord. XVI. 8, 9, 11, 14, 15; XXXVII. 4, 6, 7.

(*e*) See Dan. Pr. 678.

Section V.—Amending Answers—and Supplemental Answers (*g*).

632.

Notice of motion, for leave to amend an answer (*h*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the answer filed by him on the —— of ——, 187—, to the plaintiff's bill may be amended in the respects following, namely:

(*State proposed amendments; as thus:* by inserting the word "not" between the words "we submit that we are" and the word "liable," in the 42nd paragraph thereof);

without taking the said answer off the file, or having the same resworn [*or as may be*].

633.

Petition of course, for the like, by consent (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant, A. B.

Showeth as follows:

1. The plaintiff lately filed his bill in this cause, against your petitioner: who appeared thereto; and on the —— of ——, 187—, filed his answer to the said bill.

2. Your petitioner has since discovered the mistakes hereinafter mentioned in his said answer; and desires to correct the same.

Your petitioner therefore humbly prays that, by consent of the plaintiff, his said answer may be amended in the respects (*Continue as in* No. 632, *ante, to the end*).

And your petitioner will ever pray, &c.

634.

Summons for leave to take answer off the file, and file another, by consent (*k*).

Formal parts: see ante, No. 60.

on the part of the defendant A. B., that the answer filed by him on the —— day of ——, 187—, to the plaintiff's bill in this cause may be taken off the file of this Court; and that he may be at liberty within —— days to file another answer to the said bill.

(*g*) For the cases in which an answer has been allowed to be amended, or a supplemental answer to be filed, and the practice thereon, see Dan. Pr. 679—684.

(*h*) See Dan. Pr. 684.

(*i*) *Ibid.* For form of consent by plaintiff's solicitor, see *ante*, No. 59. For order in like case, see *Bruff* v. *Cobbold*, M. R., 2 Jan. 1867, Rolls' Lib.

(*k*) *Walker* v. *Daniell*, V. C. J., at Chambers, 5 May, 1870, Reg. Lib. B. 1178 (by consent). For order for leave for defendant to withdraw his answer, see *Giles* v. *Parker*, V. C. S. at Chambers, 23 Feb. 1864, Reg. Lib. A. 314 (by consent).

635.
Notice of motion, or summons, for leave to file supplemental answer (*l*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B., that he may be at liberty, on or before the —— of ——, 187—. to file a supplemental answer to the plaintiff's bill, for the purpose of (*State what; as thus:* correcting statements inadvertently made in his answer filed on the —— day of ——, 187—, that he had not sold an artificial exhaust elsewhere than at his mill at W. ; and as to the number of millstones to which such machinery has been applied).

636.
Petition of course, for the like, by consent (*m*).

Title—and address to the M. R.: see ante, No. 56.
The humble petition of the defendant A. B.
Showeth as follows:
1. The plaintiff lately filed his bill in this cause against your petitioner: who appeared thereto; and on the —— of ——, 187—, filed his answer to the said bill.
2. Your petitioner has since discovered certain mistakes in his said answer ; and desires to explain and correct the same by a supplemental answer.
Your petitioner therefore humbly prays, that, by consent of the plaintiff, he may be at liberty on or before (*&c.: Continue as in* No. 635, *ante, to the end*).
And your petitioner will ever pray, &c.

637.
Title and heading of a supplemental answer (*n*).

In Chancery.
(*Reference to the record.*)
Between (*Set out the full title of the cause.*)
The supplemental answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint of the above named plaintiff.
In answer, *&c.*

(*l*) See Dan. Pr. 681. For orders in like case on summons, see *Bovill* v. *Clark*, V. C. W. at Chambers, 23 Nov. 1865, Reg. Lib. A. 2221 (by consent); and *Negretti* v. *Prothero*, M. R. at Chambers, 17 Dec. 1866, Reg. Lib. B. 2631, to rectify an omission in the schedule; and see Seton, 45. It seems from *Churton* v. *Frewen*, Law Rep. 1 Eq. 238, V. C. K., that the application should be made by motion only, unless consented to: Dan. Pr. 681, n. (*f*). As to the contents of the affidavit required in support, see Dan. Pr. 681. Where the application is founded on documentary evidence, it should, it seems, be produced: *ib.* n. (*g*): *Churton* v. *Frewen, ubi sup.*

(*m*) See Dan. Pr. 681, n. (*f*). For form of consent by plaintiff's solicitor, see *ante*, No. 59.

(*n*) See Dan. Pr. 681; Braithwaite's Pr. 43. For form of a supplemental answer, see 2 Van Hey. 63.

Section VI.—Taking Answers off the File (*o*).

638.

Notice of motion, by plaintiff, that an evasive answer may be taken off the file (*p*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that a certain paper writing filed in this cause by the defendant A. B. on the —— of ——, 187—, and purporting to be his answer to the plaintiff's bill of complaint [*or as may be*], may be taken off the file of this Court (*State why*); and that the said defendant may be ordered to pay to the plaintiff his costs occasioned by the said answer, and of this application.

639.

The like, as to an irregular answer (*q*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that a certain paper writing (*&c., as above, to* Court) for irregularity: (*Describe the irregularity; as thus:* such answer not being, nor purporting to be, signed by counsel); and that the said defendant may be ordered to pay to the plaintiff his costs occasioned by the said answer, and of this application.

(*o*) For the practice as to taking evasive or irregular answers off the file, see Dan. Pr. 635, 636, 650, 655, 683, 685; and see *ante*, Nos. 70, 71.

(*p*) See Dan. Pr. 685.

(*q*) *Ibid.*, 636, 637, 650, 655, 673. For motion paper, and petition of course, by defendant, for leave to add counsel's signature, see *ante*, Nos. 598, 599.

CHAPTER XVIII.

THE JOINDER OF SEVERAL DEFENCES (*a*).

640.

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause* (*c*)).

Title, and heading of joint demurrers, pleas, and answers (*b*).

The demurrer and plea of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

(1.) Demurrer and plea (*d*).

The demurrer and answer of A. B., the above named (*&c., as above*).

(2.) Demurrer and answer (*d*).

The demurrer of A. B., the above named defendant [*Or*, one of the above named defendants], to part of the bill, and the answer of the said defendant to the remainder of the bill, *&c.*

(3.) Demurrer to part, and answer to rest (*e*).

The plea and answer of A. B., the above, *&c.*, to the bill, *&c.*

(4.) Plea, and answer in support (*e*).

The plea of A. B., the above, *&c.*, to part of the bill, and the answer of the said defendant to the remainder of the bill, *&c.*

(5.) Plea to part, and answer to rest (*f*).

The joint and several demurrer and plea [*Or*, demurrer and answer—*Or*, plea and answer] of A. B., and C. D., the [*Or*, two of the] above named defendants, to the bill, *&c.*

(6.) Joint and several demurrer and plea, or demurrer and answer, or plea and answer (*g*).

(*a*) As to the joinder of several defences, see Dan. Pr. 687—689. As to demurrers, see *ante*, Nos. 493—503; pleas, *ante*, Nos. 504—524; and answers, *ante*, Nos. 531—639: and the notes thereto. The forms there given can be readily adapted to any case of a combination of defences.

(*b*) For the general form of a demurrer, see *ante*, No. 493; of a plea, *ante*, No. 504; and of an answer, *ante*, No. 531.

(*c*) See *ante*, Nos. 493, n. (*d*), 504, n. (*d*), 531, n. (*d*).

(*d*) See Dan. Pr. 501.

(*e*) *Ibid.*, 688.

(*f*) *Ibid.*; 2 Van Hey. 114; Beames on Pleas, 325.

(*g*) See Dan. Pr. 589.

(7.) Husband and wife (*h*).

The joint demurrer and plea [*Or*, joint demurrer and answer —*Or*, joint plea and answer] of A. B., and C. his wife, the [*Or*, two of the] above named defendants, to the bill, *&c.*

Or if they have married since she was made a defendant, say: The joint demurrer, *&c.*, of A. B., and C. his wife, lately, and in the bill called, C. D., spinster [*Or*, widow], to the bill, *&c.*

641.

General form of a demurrer, plea, and answer (*i*).

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

The demurrer, plea, and answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

(1.) Demurrer.

I, the defendant A. B., by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged, as to so much of the said bill as seeks (*State what*), and also as to so much of the said bill as seeks, *&c.*, do demur thereto.

And as to the discovery and relief sought by the said bill, save so much thereof as relates to the premises therein mentioned to be situate at S., in the county of D., for cause of demurrer I show that, *&c.*

And as to so much of the said discovery and relief as relates to the said premises at S. aforesaid, for cause of demurrer I show that, *&c.*

Wherefore, and for divers other good causes of demurrer appearing in the said bill, I pray the judgment of this honourable Court whether I shall be compelled to make any answer to such parts of the said bill as I have hereinbefore demurred to.

(2.) Plea.

And I, the defendant A. B., not waiving my said several demurrers, but wholly relying thereon, as to so much of the said bill as seeks, *&c.*, and also as to so much of the said bill as seeks, *&c.*, do plead thereto; and for plea say that, *&c.*; and I do aver that, *&c.*

All which last mentioned matters and things I do plead in bar to so much of the said bill as is hereinbefore pleaded to; and I humbly pray the judgment of this honourable Court whether I

(*h*) See Dan. Pr. 589; and see Beames on Pleas, 337.

(*i*) Adapted from 2 Van Hey. 86; and see Dan. Pr. 505; see also *ante*, Nos. 493, 504, and notes thereto. Where an answer forms part of the defence, it seems proper that the whole should be in the first person: see *The United States of America* v. *Ferguson* (1866, U. No. 19). In *Scammell* v. *Light* (1862, S. No. 114), and *Anderton* v. *Magee* (1866, A. No. 73), joint demurrers and answers were filed, in which the demurrers were framed in the third person, and the answers in the first person.

ought to make any further answer to so much of the said bill as is hereinbefore pleaded to.

And I, the defendant A. B., not waiving my said several demurrers and plea, but wholly relying and insisting thereon, for answer to so much of the said bill as I am advised it is material or necessary for me to make answer unto, say as follows, *&c.* (3.) Answer.

(*Name of counsel.*)

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642. General form of a joint demurrer, several plea, and joint and several answer (*k*).

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

The joint demurrer of the above named defendants A. B. and C. his wife, to part, and the plea of the said A. B. to part, and the joint and several answer of the said A. B. and C. his wife to the other part, of the bill of complaint of the above named plaintiff.

(1.) Demurrer.

We, the defendants A. B., and C. his wife, by protestation (*Continue as in* No. 641, *ante, to* and alleged), as to so much of the said bill as seeks, *&c.*, do demur thereto; and for cause of demurrer show that, *&c.* And for further cause of demurrer show that, *&c.*

For which reason, and for divers other causes we do demur to so much of the said bill as aforesaid; and humbly pray the judgment of this honourable Court whether we shall make any further or other answer thereto.

And as to so much of the said bill as seeks, *&c.*, I, the defendant A. B., do plead thereto; and for plea, say that, *&c.* (2.) Plea.

All which matters and things I the defendant A. B., do aver, and am ready to prove as this honourable Court shall direct; and do plead the same in bar to so much of the said bill as for that purpose is hereinbefore mentioned; and humbly pray the judgment of this honourable Court whether I shall make any further or other answer thereto.

And as to so much of the said bill as we have not before respectively demurred or pleaded to, we the defendants A. B., and C. his wife, in no sort waiving the benefit of the said demurrer and plea, or either of them, but wholly relying and insisting thereon, in answer to the residue of the plaintiff's said bill, or to so much thereof as we are advised it is material or necessary for us or either of us to answer, severally say, as follows, *&c.* (3.) Answer.

(*Name of counsel.*)

(*k*) Adapted from 2 Van Hey. 89; and see Dan. Pr. 505; and *ante*, No. 641, n. (*i*).

CHAPTER XIX.

DISMISSING BILLS, OTHERWISE THAN AT THE HEARING, AND STAYING PROCEEDINGS (*a*).

SECTION I.—GENERALLY (*b*).

643.

Notice of motion by sole plaintiff, to dismiss bill filed without his authority (*c*).

Formal parts: see ante, No. 55.

on the part of A. B., the plaintiff named in the bill filed in this cause on the —— of ——, 187—:

1. That the said bill may be taken off the file of this Court, or dismissed with costs: such bill having been filed without the authority of the applicant.

2. That the defendant's costs of this suit may be taxed; and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay such costs to the defendants.

3. That in case he shall neglect so to do, and the applicant shall pay such costs, or any part thereof, the said C. D. may be ordered to repay to the applicant what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.

4. That the said C. D. may be ordered to pay to the applicant his costs of this suit, if any, and of this application: to be taxed as between solicitor and client.

644.

Notice of motion, by a co-plaintiff, to strike his name out of bill filed without his authority (*d*).

Formal parts: see ante, No. 55.

on the part of A. B., one of the plaintiffs named in the bill filed in this cause on the —— of ——, 187—, that his name may be struck out of the record of the said bill: such bill having been filed without his authority; and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay to the said A. B. his costs, if any, of this suit, and his costs of this application: to be taxed as between solicitor and client.

(*a*) See Dan. Pr. 690—721.

(*b*) *Ibid.*, 690—702.

(*c*) *Ibid.*, 260, 692. For affidavit in support, see *post*, No. 645. For order in like case, see Seton, 852, No. 1. As to the authority necessary to commence a suit, see Dan. Pr. 259, 260; and as to the mode of staying an unauthorised suit, *ib.* 260—262. For form of authority and retainer, see *post*, Chap. XLIV.

(*d*) See Dan. Pr. 260, 261. For order in like case, see *Edmunds* v. *Lawrence*, M. R., 3 Mar. 1864, Reg. Lib. A. 524; and see Seton, 853, No. 2.

645. Affidavit in support of motion by sole plaintiff, or a co-plaintiff (*e*).

In Chancery.

(*Title, and reference to the record.*)

I, A. B., of (*residence and addition*), the above named plaintiff [*Or*, one of the above named plaintiffs], make oath and say as follows:

1. On the —— of ——, 187—, I for the first time became aware that the bill in this cause had been filed in my name as the plaintiff [*Or*, one of the plaintiffs] therein.

2. I am informed and believe that the object of the said bill is (*State object, shortly; as thus:* to have the estate of E. F., deceased, administered under the direction of this honourable Court).

3. Mr. C. D., the solicitor, by whom, as I am informed and believe, the said bill has been filed, or any person on his behalf, has never been authorised by me, or by my direction, to file the said bill, or to institute or prosecute any other suit or proceeding in my name, or on my behalf, relating to the subject matter of the said bill. I have never consented to, or acquiesced in, and I desire to repudiate this suit.

4. *State any communication had with the solicitor who filed the bill, and explain the cause of any delay in applying, since deponent discovered that the suit had been instituted.*

5. *Show means of knowledge.*

Sworn, &c.: see ante, No. 12.

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646. Motion paper, for inquiry which of two suits is for an infant plaintiff's benefit (*f*).

Titles of both suits—and formal parts: see ante, No. 53.

To move on behalf of the above named infant plaintiff, by C. D., his next friend in the suit of A. *v.* B., that an inquiry may be made which of these suits of A. *v.* B., and E. *v.* F., it will be most for the benefit of the said infant plaintiff to prosecute; and that, in the mean time, all other proceedings in these suits may be stayed.

Both suits are for the same purpose; no decree has been made in either; and neither is in the paper for hearing.

A print of the bill in each suit accompanies.

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647. Notice of motion, for the like (*g*).

Titles of both suits—and formal parts: see ante, No. 55.

on behalf of the above named infant plaintiff, by C. D., his next friend in the first [*Or*, second] mentioned suit,

Or, on behalf of the defendant E. F.,

that an inquiry may be made which of these suits it will be most for the benefit of the infant plaintiff to prosecute; and that, in the mean time, all other proceedings in these suits may be stayed.

(*e*) See Dan. Pr. 261.

(*f*) *Ibid.*, 68. For the practice as to inquiring which of two suits, or whether a single suit, is for an infant plaintiff's benefit, see Dan. Pr. 68—70, 698; and as to the transfer of one of the suits from one branch of the Court to another, see *ib.* 68, 325, 700; and *ante*, Nos. 200—202.

(*g*) See Dan. Pr. 68. For order in like case, see *Turner* v. *Cooke*, M. R., 19

648.

Notice of motion to dismiss one suit, on the Chief Clerk's certificate that the other only should be prosecuted (*h*).

Titles of both suits—and formal parts: see ante, No. 55.

on behalf of the above named infant plaintiff, by C. D., his next friend in the first [*Or*, second] mentioned suit,

Or, on behalf of the defendant E. F.,

that all further proceedings in the second [*Or*, first] mentioned suit may be stayed; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to (the said C. D. and) the defendants their costs of and occasioned by such suit, and of the application for the order dated the —— of ——, 187— (*Order directing inquiry which of the two suits should be prosecuted*), and of the inquiry thereby directed, and of and relating to this application.

649.

Notice of motion for dismissal of, or inquiry as to, a single suit by an infant (*i*).

Formal parts: see ante, No. 55.

on behalf of the infant plaintiff, by C. D., of (*residence and addition*), his next friend for the purpose of this application,

Or, on behalf of the defendant E. F.,

that the bill filed in this cause may stand dismissed; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to the defendant his costs of and occasioned by this suit, and his [*Or*, to the defendant and the infant plaintiff their] costs of this application:

Or, that an inquiry may be made whether this suit has been properly instituted; and whether it will be fit and proper, and for the benefit of the infant plaintiff, that this suit should be further prosecuted; and if so, whether the said G. H. is a proper person to be the plaintiff's next friend; and if he is not, that some proper person may be approved as such next friend in his stead.

And that all other proceedings in this suit may be stayed, in the mean time.

April, 1866, Reg. Lib. B. 739. In the case cited, the application was made by one of the next friends; but the better course seems to be to give the notice in the name of the infant, by his next friend; and see Dan. Pr. 76, n. (*a*).

(*h*) See Dan. Pr. 68, 698. The brief should include the order of reference, and the Chief Clerk's certificate; and be accompanied by a print of the bill in each suit.

(*i*) See Dan. Pr. 69, 70, 78. For order, on defendant's motion, to stay proceedings till infant plaintiff attained 21, with liberty then to apply for payment of costs of suit out of his estate, see *Goodfellow* v. *Thirlwall*, M. R., 16 Nov. 1866, Reg. Lib. A. 2498.

650.
Motion paper, by sole plaintiff, on coming of age, to dismiss bill with costs, before decree (*j*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, late an infant, but now of full age, that the bill in this cause may stand dismissed, with costs: to be paid by the plaintiff, to C. D., late his next friend, and to the defendants.

651.
Petition of course, for the like (*j*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff, late an infant, but now of full age.

Showeth as follows:

1. Your petitioner, when an infant, by C. D., his next friend, filed his bill in this cause against the defendants: to which they appeared; but no decree has yet been made in this cause.

2. Your petitioner has now attained his age of twenty-one years; and is not desirous to proceed any further in the said cause.

Your petitioner therefore humbly prays, that his said bill may stand dismissed out of Court: with costs to be paid by him to the said C. D., and to the defendants.

And your petitioner will ever pray, &c.

652.
Notice of motion, to stay proceedings after decree, in like case (*j*).

Formal parts: see ante, No. 55.

on behalf of the plaintiff, late an infant, but now of full age, that on payment by him to C. D., late his next friend, and to the defendants, of their costs of this suit, all further proceedings therein may be stayed.

653.
Notice of motion, by a co-plaintiff, on coming of age, to strike out his name as plaintiff (*l*).

Formal parts: see ante, No. 55.

on behalf of the plaintiff A. B., late an infant, but now of full age, that his name may be omitted in all future proceedings in this cause, as a party co-plaintiff thereto.

(*j*) See Dan. Pr. 76. As to the effect on the suit of an infant plaintiff coming of age, and the practice where he adopts or repudiates the suit, see *ib.* 76, 77.

(*l*) See Dan. Pr. 77. For order in like case, see *Bicknell* v. *Bicknell*, M. R., 30 April, 1863, Reg. Lib. A. 1017: 32 Beav. 381; *Sanger* v. *Sanger*, M. R., 19 June, 1868, Reg. Lib. B. 1574; and see Seton, 1253, No. 8. The orders in the cases cited also directed, on the application of counsel for the remaining plaintiffs, that the name of the person to be omitted as a co-plaintiff should be inserted as a defendant, in all future proceedings in the cause.

654.

Notice of motion, by a married woman, that bill filed on her sole behalf, without her consent, may be dismissed (*m*).

Formal parts: see ante, No. 55.

on the part of the above named plaintiff A. B., the wife of (the defendant) C. B., by E. F, of (*residence and addition*), her next friend for the purpose of this application, that the bill filed in this cause on the —— of ——, 187—, may be taken off the file of this Court, or dismissed with costs: such bill having been filed without the consent of the said A. B.; and that the above named G. H., (*Next friend in bill*) may be ordered to pay to the defendants their costs of this suit; and also to pay to the said E. F., the costs, if any, of the said A. B. of this suit, and her costs of this application.

655.

The like notice, where the married woman is a co-plaintiff (*m*).

Formal parts: see ante, No. 55.

on the part of (*Continue as in* No. 654, *to* application), that the name of the said A. B. may be struck out of the record of the bill filed in this cause on the —— of ——, 187—: such bill having been filed without her consent; and that the above named C. D., (*Next friend in bill*) may be ordered to pay to the said E. F. the costs, if any, of the said A. B. of this suit, and her costs of this application.

656.

Notice of motion, by a defendant, that a married woman plaintiff may name a new, in lieu of a deceased, next friend (*o*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff C. D. may be ordered, within (one month) from this time, to name and appoint a new and sufficient next friend in this suit, in lieu of E. F., now deceased; Or, in default thereof,

If before decree, say: that the plaintiff's bill may stand dismissed with costs.

Or, if after decree, say: that all further proceedings in this cause may be stayed with costs.

(*m*) See Dan. Pr. 104. For affidavit in support, see *ante*, 645. As to the consent of a married woman to a bill being filed on her behalf, see Dan. Pr. 103. For form of consent, see *post*, Chap. XLIV. As to the institution of a suit by a married woman without a next friend, see *ante*, Nos. 97, 98; and notes thereto.

(*o*) See Dan. Pr. 106.

657.
The like, to stay proceedings till a new, in lieu of a bankrupt, next friend is appointed (*p*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that the plaintiff C. D. may be ordered within (one month) from this time to name and appoint a new and sufficient next friend in this suit, in lieu of E. F., who has become bankrupt; but without prejudice to the liability of the said E. F. to the costs already incurred by the defendant A. B. in this suit; and that all further proceedings in this suit may be stayed until such new and sufficient next friend shall have been named and appointed, or until the plaintiff shall have obtained leave to proceed with this suit *in formâ pauperis*, without a next friend.

658.
Motion paper, by plaintiff, to dismiss bill before appearance (*q*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that his bill may stand dismissed,
If against less than all the defendants, add: as against the defendant A. B., *&c.*,
without costs: the (said) defendant not having appeared thereto.

659.
Petition of course, to dismiss bill before appearance (*r*).

Title—and address to the M. R.: see ante, No. 56.
The humble petition of the plaintiff.
Showeth as follows:
1. Your petitioner lately filed his bill in this cause against the defendant [*Or*, defendants]: and is now advised to proceed no further therein.
If as to less than all the defendants, add: as against the defendant A. B., *&c.*
2. The said (*Names of defendants to be dismissed*) has [*Or*, have] not appeared to the said bill.
Your petitioner therefore humbly prays, that his said bill may stand dismissed,
If as to less than all the defendants, add: as against the said defendant A. B., *&c.*,
without costs.
And your petitioner will ever pray, &c.

(*p*) See Dan. Pr. 106. For orders in like case, see *Wilton* v. *Hill*, L.JJ., 25 Nov. 1852, Reg. Lib. B. 135: 2 De G. M. & G. 807, 809; *Macann* v. *Borradaile*, W. N. (1867), 252, 283: 16 W. R. 74, 175, V. C. W. In *D'Oechsner* v. *Scott*, M. R., 27 May, 1857, Reg. Lib. A. 1044: 24 Beav. 239, the order stayed proceedings till security for costs was given, or the plaintiff obtained an order to sue *in formâ pauperis*.

(*q*) See Dan. Pr. 690. For order in like case, see Seton, 1277, No. 1.

(*r*) See Dan. Pr. 690. For order in like case, see *Foster* v. *Christmas*, M. R., 16 Dec. 1869, Rolls' Lib.

660.
Motion paper, by plaintiff, to dismiss bill after appearance, with costs (*s*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that his bill may stand dismissed, with costs—*If as to less than all the defendants, add:* as against the defendant A. B., *&c.*

661.
Petition of course, for the like (*s*).

Proceed as in No. 659, *to end of par.* 1.
2. The said (*Names of defendants to be dismissed*) has [*Or*, have] appeared to the said bill.
Your petitioner (*Continue as in* No. 659, *to the end; but substitute* with *for* without).

662.
Notice of motion, by plaintiff, to dismiss bill after appearance, without costs (*t*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that his bill may stand dismissed as against the defendant [*Or*, all the defendants—*Or*, the defendants A. B., and C. D.], without costs.

663.
Motion paper, by plaintiff, to dismiss bill as to some of the defendants, after appearance, but without prejudice (*u*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff, that his bill may stand dismissed as against the defendants A. B., and C. D., with costs; but without prejudice to the question how such costs are ultimately to be borne as between the plaintiff and the other defendants.

664.
Motion paper, to dismiss bill, or stay proceedings, on special terms, by consent (*x*).

Formal parts: see ante, No. 53.
To move on behalf of all parties [*Or*, of the plaintiff—*Or*, defendant—*or as may be*], that (by consent) the plaintiff's bill may stand dismissed [*Or*, all further proceedings in this suit may be stayed], without costs.
Or, on the terms within mentioned—*or as may be.*

(*s*) See Dan. Pr. 690, 692, 693. For order in like case, on motion, see Seton, 1277, No. 1; and on petition, see *Glazebrook* v. *Clark*, M. R., 15 Dec. 1869, Rolls' Lib. As to when a bill cannot be dismissed as of course, see Dan. Pr. 690, 693.

(*t*) See Dan. Pr. 691. For the cases in which this application can be made, see *ib.*

(*u*) See Dan. Pr. 692. For orders in like case, see *Clements* v. *Clifford*, V. C. K., 2 Nov. 1865, Reg. Lib. A. 2018: 11 Jur. N. S. 851: 14 W. R. 22; *Berndston* v. *Churchill*, V. C. W., 12 Jan. 1866, Reg. Lib. A. 13: W. N. (1866), 8.

(*x*) See Dan. Pr. 690, 693, 696. Where any of the parties are not *sui juris*,

665.
Petition of course, for the like (*y*).

Formal parts: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Your petitioner [*Or*, The plaintiff] lately filed his bill in this cause against the defendants: who appeared thereto.

If so: and a decree was made therein, dated the —— of ——, 187—, whereby certain accounts and inquiries were directed to be taken and made; but the Chief Clerk has not yet made his certificate of the result thereof [*or as may be*].

2. Your petitioner has now agreed with the defendants [*or as may be*] that the said bill shall stand dismissed,

Or, that all further proceedings in this cause shall be stayed,

upon the following terms, namely: (*State the terms; as thus:* that the said defendants shall pay to the plaintiff £100, on or before the—— of ——, 187—.

Or, that the said defendants shall pay to the plaintiff his costs of this suit: to be taxed.

Or, that each party shall pay his own costs of this suit).

Your petitioner therefore humbly prays that the bill in this cause may stand dismissed,

Or, that all further proceedings in this cause may be stayed,

on the terms aforesaid.

And your petitioner will ever pray, &c.

666.
Notice of motion, or summons, for the like (*z*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that, by consent, the plaintiff's bill in this cause may stand dismissed,

Or, that all further proceedings in this cause may be stayed,

on the terms following, namely: (*State the terms*); and that all proper directions for carrying the said terms into effect may be given.

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or are executors or trustees, the Court must be satisfied of the propriety of the agreement: Dan. Pr. 696.

(*y*) See Dan. Pr. 696. For order dissolving injunction, and staying all further proceedings in suit, by consent, see *Maltby* v. *Ware*, M. R. 4 May, 1870, Rolls' Lib. For order dismissing bill, without costs, by consent, see *Barry* v. *Smith*, M. R., 15 Dec. 1869, Rolls' Lib. For form of consent to petition, see *ante*, No. 59. Where the terms are complicated, or a fund in Court is dealt with, the order is usually made on special petition: Dan. Pr. 696, n. (*c*).

(*z*) See Dan. Pr. 696. For order, on motion, see *Priddle* v. *Wood*, V. C. W., 26 July, 1866, Reg. Lib. B. 2027; and on summons, see *Gaby* v. *Gaby*, M. R. at Chambers, 16 Feb. 1864, Reg. Lib. A. 323.

667.
Special petition to stay proceedings, on terms agreed on (*a*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *State the filing of the bill—the appearance of the defendants—the decree, if any—and the terms agreed upon* (*See* No. 665, *ante*); *and any other facts and circumstances material in the particular case.*

Your petitioner therefore humbly prays, that the plaintiff's bill in this cause may stand dismissed out of Court,

Or, that all further proceedings in this cause may be stayed,

upon the terms agreed upon as aforesaid; and that all proper directions for carrying the said terms into effect may be given.

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante*, No. 58).

668.
Notice of motion, or summons, by defendant, to dismiss bill, or stay proceedings, on submitting to satisfy plaintiff's demand (*b*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B., that (*State the terms proposed; as thus:*

upon payment by him to the plaintiff within (three weeks) of the amount of the debt due to the plaintiff from the estate of A. B., the testator in the plaintiff's bill named, on the promissory note therein mentioned, and of interest thereon at £4 per cent. per annum from the —— of ——, 187—, till payment, and of the plaintiff's costs of this suit: to be taxed),

the plaintiff's bill may stand dismissed.

Or, all further proceedings in this suit may be stayed.

If there are other defendants, add: as against the said defendant A. B.

(*a*) See Dan. Pr. 696. For order approving a compromise on behalf of infants, see *Jones* v. *Williams*, V. C. S., 7 July, 1865, Reg. Lib. A. 1335.

(*b*) See Dan. Pr. 694, 695; and see Seton, 115, No. 3; 152, No. 9. Before decree, the application, in a suit by bill, is not entertained on summons, except by consent. For order on summons, after decree, see *Official Manager of British Provident, &c., Society* v. *Vialls*, V. C. K. at Chambers, 26 June, 1865, Reg. Lib. B. 1314. For order, on motion, to stay proceedings, pending trial of an issue, see *Foxwell* v. *Hollin*, L. C., 11 Jan. 1864, Reg. Lib. A. 66; and for order, on petition, to stay all proceedings, and that the decree be not further prosecuted, see *Foster* v. *Harvey*, V. C. W., 6 May, 1865, Reg. Lib. A. 858: on petition of a defendant, and affidavit of service on the plaintiff and co-defendants.

669.
Another form thereof (c).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B.:

1. That an account may be taken of what is due to the plaintiff for principal money and interest in respect of his debt in the plaintiff's bill mentioned; and that his costs of this suit, and of this application, may be taxed.

2. That upon payment of the amount of the said principal, interest, and costs, by the defendant to the plaintiff, within (one week) after the Chief Clerk's certificate of such amount shall have become absolute, the plaintiff's bill (*Continue as in* No. 668, *to the end*).

670.
Notice of motion, by a subsequent incumbrancer, to dismiss a foreclosure and redemption suit, with costs, as against his co-defendants, on payment of a security fund into Court; and for inquiry as to amount due to plaintiff (d).

Formal parts: see ante, No. 55.
on the part of the defendant D. L. H.:

1. That he may, on or before the —— day of ——, pay the sum of £—— into the bank, to the credit of this cause; and that the same may be laid out in bank £3 per cent. annuities, and the interest invested and accumulated; but not otherwise dealt with without notice to him.

2. That upon such payment being made, the plaintiff's bill may stand dismissed as against all the defendants, except the said D. L. H.: with costs to be taxed; and without prejudice to any other suit.

3. That the plaintiff may be directed to pay such costs, when taxed; and be repaid by the defendant D. L. H.

4. That the defendant D. L. H. may pay to the plaintiff and the said other defendants, respectively, their costs of this application: to be taxed.

5. That, on the undertaking of the defendant D. L. H. to indemnify the plaintiff against any proceeding which may be taken in the mean time, by any party, for redeeming the plaintiff's security, an account may be taken of what is due to the plaintiff for principal and interest in respect of his mortgage securities, in the pleadings mentioned, and for all sums of money properly paid by him in respect of his mortgage securities.

6. That the plaintiff's costs of this suit, and all costs, charges, and expenses properly incurred by him, and by D. J. deceased, the testator in the pleadings named, respectively, in any other suits, or otherwise in respect thereof, may be taxed.

7. That an account may be taken of the rents and profits of the said mortgaged premises come to the hands of the plaintiff, or to

(c) See Dan. Pr. 694, 695.

(d) *Jones* v. *Tinney*, V. C. K.-B., 20 Dec. 1845, Reg. Lib. A. 294: Kay App. 45; Dan. Pr. 695; Fisher on Mort. 369; and see *Chalie* v. *Gwynne*, M. R., 11 Mar. 1846, Reg. Lib. A. 851: Kay, App. 46; Dan. Pr. 695.

the hands of any other person or persons by his order or for his use, or which he, without his wilful default, might have received.

8. That what shall be coming on the said account of rents and profits may be deducted from what shall be due to the plaintiff for principal, interest, and costs, as aforesaid; and the balance be certified.

9. That the plaintiff, and the defendant D. L. H., respectively, may be at liberty to apply to this Court, as they may be advised.

10. That in default of payment by the defendant D. L. H. of the said £——, by the time aforesaid, the costs of the plaintiff, and the said other defendants, of this application, may be taxed, and be paid to them by the defendant D. L. H.

671.

Notice of motion, to stay proceedings, till costs of former suit are paid (*e*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that all further proceedings in this cause

If there are other defendants, add: as against the said defendant

may be stayed, until after the plaintiffs shall have paid to the said defendant the sum of £——, the amount of the taxed costs directed to be paid by them to him, by the order made in the cause of C. *v.* D. (187—, C. No. —), dated the —— of ——, 187—.

672.

Further notice of motion, for dismissal of bill, in default of payment (*f*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiffs may be ordered on or before the —— of ——, 187—, to pay to the defendant the sum of £——, mentioned in the order in this cause dated the —— of ——, 187—, pursuant to the order made in the cause of C. *v.* D. (187—, C. No. —), dated the —— of ——, 187—; or, in default thereof, that the plaintiff's bill may stand dismissed out of Court,

If there are other defendants, add: as against the said defendant,

for want of prosecution, without further order: with costs to be paid by the plaintiffs to the said defendant.

(*e*) See Dan. Pr. 696. For order in like case, see *Long* v. *Storie*, V. C. E., 6 Dec. 1849, Reg. Lib. B. 197: 13 Jur. 1091.

(*f*) See Dan. Pr. 697. For order in like case, see *Ernest* v. *Govett*, V. C. W., 9 July, 1863, Reg. Lib. A. 1731: 2 N. R. 486.

673.
Notice of motion, to stay proceedings, till payment by plaintiff of costs incurred in the suit (*g*).

Formal parts : see ante, No. 55.
on the part of the defendant A. B., that all further proceedings in this cause

If there are other defendants, add : as against the said defendant

may be stayed until the plaintiffs shall have paid to the said defendant the sum of £——, the amount of the taxed costs payable by them to him, pursuant to the order dated the —— of ——, 187—.

674.
Notice of motion, or summons, to stay proceedings in one of two concurrent creditors' suits, after a decree in the other only (*h*).

Titles of both suits—and formal parts : see ante, No. 55, *or* 60.
on the part of A. B., the plaintiff in the first mentioned cause [*Or*, of C. D., the defendant in each of the above mentioned causes—*or as may be*] :

1. That all further proceedings in the second mentioned cause may be stayed ; and that the costs of E. F., the plaintiff therein, up to the time he had notice of the decree in the first mentioned cause dated the —— of ——, 187—, including his costs of this application, may be taxed.

Where assets admitted : 2. That such costs may be paid to the plaintiff E. F., by the defendant C. D. [*or as may be*], out of the assets of G. H., the testator in the pleadings named ; and that the plaintiff E. F. may be at liberty to go in under the said decree, and prove his claim, against the assets of the said G. H.

Or, where assets denied : 2. That the plaintiff E. F. may be at liberty to go in under the said decree, and prove his claim, and the amount of his said costs, against the assets of the said G. H.

3. That the costs of the defendant C. D. of the second mentioned cause, and the costs of the plaintiff A. B., and the defendant C. D. [*or as may be*], of this application, may be costs in the first mentioned cause.

(*g*) See Dan. Pr. 697. For order in like case, see *Bradbury* v. *Shawe*, V. C. K.-B., 22 July, 1850, Reg. Lib. A. 1629 : 14 Jur. 1042; and see *Futvoye* v. *Kennard*, V. C. S., 5 June, 1860, Reg. Lib. A. 1052. For notice of motion that plaintiff give security for costs within a limited time, or bill be dismissed, see *ante*, No. 78.

(*h*) See Dan. Pr. 698—700. For order in like case, see Seton, 887. Where the decree is in prosecution at Chambers, the application may be made by summons : see Dan. Pr. 700. As to the transfer of one of the causes, where both are not attached to the same branch of the Court, see *ante*, Nos. 199—201, and notes thereto.

675.

Notice of motion, or summons, to stay a class suit, after decree (*i*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B., that (*State the terms proposed: see ante*, No. 668: *see also ante*, No. 669), all further proceedings in this suit by the plaintiff may be stayed.

Section II.—For Want of Prosecution (*j*).

676.

Notice of motion, to dismiss bill for want of prosecution (*k*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff's bill in this cause may stand dismissed,

If there are other defendants, add: as against the said defendant (*l*),

for want of prosecution: with costs to be paid by the plaintiff to the said defendant.

677.

Motion paper, for payment of costs of suit, where parties not added, under order at hearing dismissing bill on default (*m*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., that his costs of this suit may be taxed, and that the plaintiff may be ordered to pay the same: the plaintiff not having amended his bill pursuant to the order dated ——, 187—.

A copy of the order accompanies.

(*i*) See Dan. Pr. 215, 695. For form of notice of motion, or summons, for future conduct of a class suit which has been stayed, see *post*, Chap. XXIX. As to staying proceedings, pending a rehearing or appeal, see *post*, Chap. XXXII.

(*j*) As to the dismissal of bills for want of prosecution, see Dan. Pr. 703—715; Ord. IX. 12; XIV. 16, 17; XXXIII. 10—13; XL. 38; Ord. 22 Nov. 1866, rr. 2, 3.

(*k*) See Dan. Pr. 703. For orders in like case, see *Foxwell* v. *Salamon*, V. C. K., 19 Jan. 1865, Reg. Lib. A. 1234; *Rantzen* v. *Rothschild*, V. C. S., 21 Dec. 1865, Reg. Lib. B. 2495; *Wooding* v. *Wooding*, M. R., 2 Dec. 1869, Reg. Lib. B. 3071; and see Seton, 1277, No. 3; 1278, No. 4. An order to dismiss for want of prosecution can only be drawn up on the production of the Record and Writ Clerk's certificate of the proceedings in the cause, for the purpose of showing what proceedings have been had; and the certificate ought to be produced in Court at the time the motion is made, or at all events before the rising of the Court on that day: Dan. Pr. 709. For affidavit of service of the notice of motion, see *ante*, No. 47. An affidavit of having been served with the notice of motion is not required in practice: production of the notice served being deemed sufficient evidence of such service: see *ante*, No. 52, n. (*c*).

(*l*) See Dan. Pr. 709.

(*m*) *Ibid.* 707; and see *Dobede* v. *Edwards*, 11 Sim. 454. *Quære*, if the application should not be on notice: see Seton, 1116; Dan. Pr. 707, n. (*c*).

678. Notice of motion, to dismiss after a default, where the bill has not been dismissed in case of default (*n*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that, unless the plaintiff amends his bill, pursuant to the order dated the —— of ——, 187—, within one week, the said bill may stand dismissed,
If there are other defendants, add: as against the said defendant,
with costs to be paid by the plaintiff to the said defendant.

679. Notice of motion, or summons, to enlarge time limited by plaintiff's undertaking to speed (*o*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff, that the time limited by the order dated the —— of ——, 187—, for the plaintiff to amend his bill,
Or, file replication—*Or*, serve notice of motion for a decree
Or, set down this cause for hearing—*or as may be*,
may be enlarged to the —— of ——, 187—; and that the costs of this application may be costs in the cause.

680. Notice of motion, to restore bill (*p*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that notwithstanding he has not amended his bill [*or as may be*] in this cause, pursuant to the order dated the —— of ——, 187—, his bill may be restored to the file of this Court.

SECTION III.—WHERE THE SUIT HAS ABATED, OR BECOME OTHERWISE DEFECTIVE (*q*).

681. Notice of motion, by defendant, to dismiss bill, unless prosecuted by representatives of deceased sole plaintiff (*s*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that C. D., and E. F., the legal personal representatives [*or as may be* (*r*)] of the late plaintiff G. H., now deceased, may be ordered within (one month) to revive this suit against the said defendant; or, in default thereof, that the plaintiff's bill may stand dismissed,
If there are other defendants, add: as against the said defendant,
for want of prosecution, without further order.

(*n*) See Dan. Pr. 707.
(*o*) *Ibid.*, 711. For order to dismiss bill, where plaintiff has not proceeded within a given time, see *Stephenson* v. *Mackay*, M. R., 28 May, 1857, Reg. Lib. B. 1078; and see S. C., 24 Beav. 252; and Seton, 1278, No. 4.
(*p*) See Dan. Pr. 711.
(*q*) *Ibid.*, 715—718.
(*r*) *Ibid.*, 716.
(*s*) *Ibid.* 715; Ord. XXXII. 4. For orders in like case, see *Hill* v. *Gaunt*,

682.

The like, unless prosecuted by surviving co-plaintiff (*t*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff C. D. (*surviving plaintiff*) may be ordered, within (*Continue as in* No. 681, *ante, to the end, and add*): with costs to be paid by the said plaintiff C. D. to the said defendant.

683.

Notice of motion, by representatives of deceased defendant, to dismiss suit, unless revived against them (*u*).

Formal parts: see ante, No. 55.

on the part of A. B., of (*residence and addition*), and C. D., of, *&c.*, the legal personal representatives of the late defendant E. F., now deceased, that the plaintiff may be ordered, within one month, to obtain and serve on them an order to revive this suit; or, in default thereof, that the plaintiff's bill may stand dismissed,

If there are surviving defendants, add: as against the said A. B., and C. D.,

for want of prosecution.

684.

Notice of motion, by defendant, to dismiss or stay suit, unless prosecuted by assignee, or trustee, of bankrupt sole plaintiff (*v*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that C. D., and E. F., the assignees of the estate and effects

Or, that C. D., the official assignee—*Or*, creditors' assignee of the estate and effects

Or, that C. D., trustee of the property

of the above named plaintiff: who has been adjudicated a bankrupt: may be ordered to take proper supplemental proceedings in this suit within (three weeks), for the purpose of prosecuting the same against the said defendant; or, in default thereof,

If before decree, add: that (*w*) the plaintiff's bill may stand dismissed,

V. C. W., 15 Nov. 1860, Reg. Lib. A. 2048: 7 Jur. N. S. 42: 9 W. R. 68; *Cole* v. *Watkins*, V. C. K., 26 July, 1866, Reg. Lib. A. 1848; and for order in like case, and dissolving an injunction in default, see *Thomas* v. *Sawyer*, V. C. J. at Chambers, 21 Dec. 1869, Reg. Lib. B. 3155; and see Seton, 1278, No. 5. As to the course, where the plaintiff sued as public officer of a joint-stock company, see Dan. Pr. 716.

(*t*) See Dan. Pr. 716. For order in like case, see Seton, 1278, No. 5.

(*u*) See Dan. Pr. 717. For order in like case, see *Cross* v. *Cross*, 11 W. R. 797, V. C. S.

(*v*) See Dan. Pr. 63, 717. For order in like case, against an official assignee before decree, see *Balls* v. *Bradfield*, V. C. S., 14 Dec. 1865, Reg. Lib. A. 2356; and against a creditor's assignee, *Solomon* v. *Cohen*, V. C. M., 29 July, 1870, Reg. Lib. B. 2390; and see Seton, 1278, No. 6. As to serving notice of the motion on the bankrupt, as well as on the assignees, see *Vestris* v. *Hooper*, 8 Sim. 570. For the practice, where a plaintiff becomes bankrupt, see Dan. Pr. 63, 64, 717, and *post*, Chap. XXXIII.; or a defendant, see Dan. Pr. 144, 145, 718.

(*w*) If an injunction has been awarded, add here: the injunction awarded by the order dated the —— day of —— in this cause may be dissolved; and that

If there are other defendants, add: as against the said defendant,
without further order.

Or, if after decree, add: that (*x*) all further proceedings in this suit

If there are other defendants, add: as against the said defendant
may be stayed.

Section IV.—Cases of Election (*y*).

685. Motion paper, by defendant, for plaintiff to elect (*z*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., for the usual order for the plaintiff to elect whether he will proceed in this Court, or in his pending action at law for the same matter.

See note of proceedings within.

Note of proceedings.

(1) Bill filed on ——, 187—.

(2) Appearance entered by defendant A. B., on ——, 187—.

(3) No interrogatories served. Time to serve same expired on ——, 187—.

Or,

(3) Interrogatories served on ——, 187—.
Answer filed on ——, 187—.
No exceptions filed.

Or,

Exceptions filed on ——, 187— ; and answer held insufficient on——, 187—.
Further answer filed on ——, 187—.
No exceptions filed thereto—nor former exceptions set down.

Or,

Notice given to plaintiff on ——, 187—, to set down exceptions within four days : but same not set down.

Or,

Exceptions filed on ——, 187— ; and answer held sufficient on ——, 187—.

(*x*) See note (*w*), *supra*.

(*y*) As to election between action and suit, see Dan. Pr. 718—721 ; Ord. XLII. 5—8 ; Seton, 949, 950.

(*z*) See Dan. Pr. 546, 719. For order in like case, see Seton, 947, No. 1 ; and for special election, *ib.* 948, No. 4. As to service of the order, see Dan. Pr. 720. For form of notice to plaintiff to set down exceptions to an answer in four days, see *ante*, No. 617.

686.
Petition of course, by defendant, for plaintiff to elect (*a*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff, on the —— day of ——, 187—, filed his bill in this cause against your petitioner: who appeared thereto.

Where answer not required: 2. The plaintiff has not required an answer from your petitioner to the said bill; and the time within which your petitioner ought to have been served with interrogatories for his examination in answer to the said bill, in case the plaintiff required an answer thereto, expired on the —— of ——, 187—.

Or, where answer required: 2. On the —— of ——, 187—, your petitioner put in his answer to interrogatories filed for his examination in answer to the said bill; and such answer has not been excepted to.

Or, and such answer having been excepted to, your petitioner on the —— of ——, 187—, filed his further answer to the said bill; but the plaintiff has not excepted thereto, or set down the former exceptions for hearing.

Or, and such answer having been excepted to, your petitioner on the —— of ——, 187—, by notice in writing required the plaintiff to set down the exceptions within four days from the service of such notice; but the plaintiff has not set down the same.

Or, and such answer having been excepted to, the same was, on the argument of the said exceptions, held sufficient.

3. The plaintiff is prosecuting your petitioner in this honourable Court by his said bill, and also at law for the same matter by an action.

Your petitioner therefore humbly prays, that the usual order may be made for the plaintiff to make his election in which Court he will proceed.

And your petitioner will ever pray, &c.

687.
Notice of motion, to discharge order to elect (*b*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the order made in this cause, dated the —— of ——, 187—, whereby it was ordered that (*Recite the ordering part*), may be discharged: with costs to be paid by the defendant A. B. to the plaintiff.

(*a*) See *ante*, No. 685, n. (*z*).

(*b*) See Dan. Pr. 720; Ord. XLII. 8. For order for inquiry whether the suit and action are for the same matter, see Seton, 948, No. 3; and see *ante*, Nos. 513, 514.

688.
Ordinary form of election (*c*).

In Chancery.

(*Title, and reference to the record.*)

In pursuance of the order made in this cause, dated the —— day of ——, 187—, the plaintiff hereby elects to proceed in this Court [*Or*, to proceed at law]. Dated this —— day of ——, 187—.

C. D., the plaintiff above named, in person.

Or,

E. F., of (*Place of business*), solicitor for the plaintiff above named (*d*).

689.
Notice of same having been filed (*e*).

Formal parts: see ante, No. 54.

Take notice, that I have this day filed the plaintiff's election, pursuant to the order dated the —— of ——, 187—.

690.
Notice of motion, for further time to elect (*f*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the time limited by the order dated the —— of ——, 187—, for the plaintiff to make his election, may be enlarged to the —— of ——, 187—.

(*c*) See Dan. Pr. 721.

(*d*) See Ord. III. 1.; Dan. Pr. 721.

(*e*) See Dan. Pr. 721. The election must be filed at the Report office; and notice of the filing must be given to the defendant's solicitor: Dan. Pr. 721.

(*f*) See Dan. Pr. 721. For order in like case, see Seton, 948, No. 2.

CHAPTER XX.

MOTION FOR DECREE (*a*).

691.

Consent to notice of motion being served, before time to answer has expired (*b*).

In Chancery.

(*Short title, and reference to the record.*)

We consent to notice of motion for a decree in this cause being served, notwithstanding the time allowed to answer the plaintiff's bill has not expired. Dated this —— day of ——, 187—.

C. D., solicitor for defendant E. F.

G. H., solicitor for all the other defendants.

692.

Summons for further time to serve notice of motion (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the time within which he may serve notice of motion for a decree or decretal order,

If so: or file replication (*d*), or set down this cause to be heard on bill and answer, or obtain and serve an order for leave to amend the bill (*e*),

may be enlarged to the —— of ——, 187—; and that the costs of this application may be costs in the cause.

693.

Notice of motion for decree (*f*).

In Chancery.

(*Title of the cause, and reference to the record.*)

Take notice, that this honourable Court will be moved before his lordship the Master of the Rolls [*or as may be: see ante*, No. 55], at the expiration of one month from the service of this notice on you, or so soon thereafter as counsel can be heard, by counsel

(*a*) As to motions for decree, see, generally, Dan. Pr. 722—730; 15 & 16 Vic. c. 86, ss. 15, 16; Ord. XXXIII. 4—9, as varied by Ord. 22 Nov. 1866.

(*b*) See Dan. Pr. 722.

(*c*) *Ibid.*, 722; Ord. XXXVII. 17. For orders in like case, see *Finney* v. *Salt*, V. C. W. at Chambers, 14 Jan. 1864, Reg. Lib. A. 15; *Trickett* v. *Husler*, V. C. S. at Chambers, 21 Dec. 1865, Reg. Lib. B. 2439.

(*d*) As to replication, see *post*, No. 715, *et seq.*

(*e*) *Homfray* v. *Green*, V. C. S. at Chambers, 19 Jan. 1864, Reg. Lib. A. 53; *Lees* v. *Sullivan*, M. R. at Chambers, 5 Jan. 1869, Reg. Lib. B. 7; *Wright* v. *India Rubber Company*, V. C. J. at Chambers, 8 Jan. 1869, Reg. Lib. B. 6; *De Silva* v. *Benoliel*, V. C. M. at Chambers, 30 July, 1870, Reg. Lib. A. 2092.

(*f*) See Dan. Pr. 722, 723; Ord. XXXIII. 4, 5. For form of affidavit of

on behalf of the plaintiff, for a decree according to the prayer of the plaintiff's bill in this cause.

Or, in the terms set forth in the schedule hereto (*g*).

And take also notice, that a list of the affidavits (*If so:* and answers) intended to be used by the plaintiff in support of such motion is set forth at the foot of this notice.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party giving the notice: see ante*, No. 4, *or* 7.)

To all the above named defendants; and to their respective solicitors, or agents, in this cause [*or as may be*].

The list above referred to.

1. Affidavit of A. B., filed ——, 187—.
2. Joint affidavit of C. D., and E. F., } both filed ——, 187—.
3. Affidavit of G. H., }
4. Answer of the defendant L. M., filed ——, 187—.
5. Further answer of the same defendant, filed ——, 187—.
6. Answer of the defendant N. O., filed ——, 187—.

694.

Motion paper, for leave to serve the notice abroad (*h*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve the defendant A. B., at (*State where; as thus:* Paris, or elsewhere in France), with notice of a motion for a decree, in the terms within set forth [*Or*, annexed], at the expiration of —— weeks (*i*) from such service, together with a copy of the order to be made on this motion;

If so: and with copies of the affidavits to be used in support of such motion (*j*);

and that the defendant may have —— weeks after such service to file his affidavits in answer; and that the plaintiff may have —— weeks to file affidavits in reply to such affidavits in answer.

An affidavit in support accompanies.

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service of the notice, see *post*, No. 706. Where the motion has been set down at the request of the plaintiff, and he makes default at the hearing, an affidavit that the defendant, appearing at the hearing, has been served with the notice of motion is, it seems, unnecessary; but the notice of motion served must be produced: see Dan. Pr. 729.

(*g*) *Middleton* v *Chichester*, M. R., 17 Jan. 1863, Reg. Lib. B. 137.

(*h*) See Dan. Pr. 723, 725. For order in like case, see *Middleton* v. *Chichester*, *ubi sup.*; and see Seton, 1246, No. 11; 1247. For order for substituted service of the notice, see *Atkinson* v *Mackreth*, W. N. (1867), 41, M. R.

(*i*) As to the times to be fixed, in the case of a service abroad, see Dan. Pr. 723; and see *ante*, No. 290.

(*j*) See *Middleton* v *Chichester*, *ubi sup.*; Dan. Pr. 723.

704.
Summons for further time to give notice to produce deponents for cross-examination(*t*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant A. B.], that the time within which he is at liberty to give notice requiring the production for cross-examination of deponents who have made affidavits to be used at the hearing of the plaintiff's motion for a decree may be extended to the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

705.
Notice to produce such deponents (*u*).

The same as No. 804, *post.*

706.
Affidavit of service of notice of motion for decree (*x*).

Proceed as in No. 47, *ante, to the end; and add:*

2. There was set forth at the foot of the [*Or*, each] copy served as aforesaid of the said notice a list of the affidavits (*If so:* and answers) intended to be used in support of the said motion.

707.
Consent to the motion being set down prematurely (*y*).

In Chancery.

(*Reference to the record.*)

A. v. B. } The evidence in this cause has been completed and filed [*Or*, There is no evidence to be filed in this cause].

We, therefore, consent to this cause being at once set down to be heard on motion for decree, and to the certificate for that purpose being granted forthwith. Dated this —— day of ——, 187—.

C. D., solicitor for the plaintiff.
E. F., solicitor for all the defendants.

for decree; and enlarging the time for each side to give notice for production of such deponents for that purpose: see *Lewis* v. *Fothergill,* V. C. G., 3 Dec. 1868, Reg. Lib. B. 3048.

(*t*) See Dan. Pr. 726, 810; Ord. XXXVII. 17; Ord. 5 Feb. 1861, r. 19; and *Lewis* v. *Fothergill, supra.*

(*u*) See Dan. Pr. 726, 810; Ord. 5 Feb. 1861, r. 19. For order enlarging the time for the cross-examination of deponents, and appointing a special examiner to take the cross-examination, see *Weston* v. *Weston,* M. R., 21 Dec. 1869, Reg. Lib. B. 3068 (on adjournment into Court). As to compelling the attendance of the deponents, see *post,* No. 805, *et seq.*

(*x*) See Dan. Pr. 729; and *ante,* No. 693, n. (*f*).

(*y*) See Dan. Pr. 728, n. (*p*).

708.
Request for certificate to set down the motion (*z*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Prepare certificate to set down cause on motion for decree.

The time to file affidavits in answer expired on the ——, 187—.

—*If so, add:* and none were filed.

The time to file affidavits in reply expired on the ——, 187—.

The enlarged time to file affidavits in answer expired on the ——, 187—. *If so, add:* and none were filed.

The enlarged time to file affidavits in reply expired on the ——, 187—.

[*or as may be.*]

C. D., plaintiff's solicitor.

709.
Certificate to set down the motion (*a*).

In Chancery.

(*Name of Judge, and reference to the record.*)

(*Short title* (*b*).)

These are to certify that this cause is in a fit state to entitle the plaintiff to move for a decree, as appears by my book. Dated this —— day of ——, 187—.

X. Y.,
C. R. & W.

710.
Memorandum to be indorsed on the certificate (*c*).

If there is an infant defendant, say: A guardian *ad litem* has been appointed to the infant defendant A. B.

Or, if there is not, say: There is not any infant defendant.

C. D., plaintiff's [*Or*, defendant's] solicitor.
——, 187—.

(*z*) See Dan. Pr. 728, n. (*p*).

(*a*) *Ibid.*, 728. A fee of 4*s.* is payable in a fee fund stamp affixed to the certificate: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. As to the time at which the motion is to be set down, see Ord. 22 Nov. 1866, r. 4, Dan. Pr. 728. If the plaintiff fails to set down the motion within the time limited, the defendant may either move to dismiss the bill, or set down the motion at his own request: Ord. 22 Nov. 1866, r. 3; Dan. Pr. 728. For the mode in which the motion is set down, see Dan. Pr. 728; Ord. XXXIII. 9; Reg. Regul. 15 Mar. 1860, r. 6, as varied by Ord. 22 Nov. 1866, rr. 3, 4. As to setting down a motion for an injunction turned into a motion for decree, see Dan. Pr. 729.

(*b*) If the motion is to be set down at the defendant's request, the words, "at the request of the defendant," are added, beneath the title.

(*c*) See Reg. Regul. 15 Mar. 1860, r. 6, as varied by Ord. 22 Nov. 1866, rr. 3, 4; Dan. Pr. 728.

711.
Certificate of counsel, that the motion is fit to be heard short (*d*).

In Chancery.

(*Short title.*)

I certify that the motion for a decree in this cause is fit to be heard as a short cause.

B. A., Counsel for the plaintiff.

——, 187—.

712.
Notice that the motion is marked short (*e*).

Formal parts: see ante, No. 54.

Take notice, that the motion for a decree in this cause has been marked as a short cause in the Registrars' book of causes standing for hearing.

713.
Consent to the motion being prematurely heard (*f*).

In Chancery.

(*Short title, and reference to the record.*)

We consent to the motion for a decree in this cause being placed in the paper of short causes for hearing before the Master of the Rolls [*Or,* Vice-Chancellor ——] on the —— day of ——, 187— [*or as may be*]. Dated this —— day of ——, 187—.

A. B., solicitor for the plaintiff.

C. D., solicitor for all the defendants.

714.
Briefs on the hearing (*g*).

The plaintiff's brief will consist of printed copies of the bill, answers, affidavits in support, opposition, and reply, and depositions of the witnesses; and of written copies of such exhibits or other documents as may be necessary.

A defendant's brief will be the same: except that, as to the answers, copies of only his own answer, and of such answers of co-defendants as the plaintiff has notified his intention to read against him, or as he has signified his intention to read against the plaintiff or co-defendants, should be furnished.

Each brief should be accompanied with observations.

(*d*) See Dan. Pr. 729; Reg. Regul. 15 Mar. 1860, r. 10. As to printing the evidence for the hearing, see Dan. Pr. 729, 797—799; and *post,* Nos. 796, 797. As to the hearing of the motion generally, see Dan. Pr. 729, 730. As to the papers to be left for the Judge, see *ib.,* 729; Reg. Regul. 15 Mar. 1860, r. 22; Reg. Notice, 23 Nov. 1861; and see Ord. XXI. 12. For form of decree, on motion for decree, see Seton, 26. For order on such motion, giving leave to amend bill, by praying a partition, see *Smith* v. *Wheelhouse,* V. C. M., 3 Aug. 1870, Reg. Lib. B. 2225. For form of petition of appeal from the decree, see *post,* Chap. XXXII.

(*e*) See Dan. Pr. 729. For form of affidavit of service of the notice, see *ante,* No. 47; and of the notice of motion, *ante,* No. 706.

(*f*) See Dan. Pr. 729.

(*g*) *Ibid.,* 729, n. (*b*). For form of indorsement, see *post,* No. 867; but add, "of motion for decree," after, "Brief on the hearing."

CHAPTER XXI.

REPLICATION (*a*).

715. Consent to replication being filed, notwithstanding time to answer voluntarily has not expired (*b*).

I consent to the within replication being filed, notwithstanding the time allowed the defendant A. B. to file a voluntary answer to the plaintiff's bill has not expired. Dated this —— day of ——, 187—.

C. D., solicitor for the said defendant.

716. Summons for enlargement of time to file replication (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the time within which he may file replication,

If so: or serve notice of motion for a decree or decretal order (*d*), or set down this cause to be heard on bill and answer, or obtain and serve an order for leave to amend the bill (*e*),

may be enlarged to the —— of ——, 187— ; and that the costs of this application may be costs in the cause.

(*a*) As to replication, see, generally, Dan. Pr. 731—737. For the cases in which replication must be filed, and at what stage, see Dan. Pr. 731, 732; 15 & 16 Vic. c. 86, s. 26; Ord. XVII. 1. As to taking evidence after replication, see Dan. Pr. 738, *et seq.*; and *post*, No. 731, *et seq.*; and as to printing the evidence, see Dan. Pr. 797—799; and *post*, Nos. 796, 798. As to setting down the cause on bill and answer, see Dan. Pr. 731; Ord. XIX. 1, 2; and *post*, Chap. XXIII.—XXV.

(*b*) See Dan. Pr. 735. The consent should be indorsed on the proposed replication: *ib.*, n. (*o*).

(*c*) See Dan. Pr. 736; Ord. XXXIII. 10, 12; Ord. XXXVII. 17. For order in like case, see *Trickett* v. *Husler*, V. C. S., 21 Dec. 1865, Reg. Lib. B. 2439. As to the time limited for filing replication, see Dan. Pr. 735, 736; Ord. XXXIII. 10, 12.

(*d*) As to motions for decree, see *ante*, No. 691, *et seq.*

(*e*) *Homfray* v. *Green*, V. C. S. at Chambers, 19 Jan. 1864, Reg. Lib. A. 53; *De la Peyrouse* v. *Pelly*, V. C. W. at Chambers, 29 Dec. 1865, Reg. Lib. A. 2431.

717.

Replication (*f*).

In Chancery.

(*Set out the full title of the cause, and reference to the record* (*g*).)

The plaintiff in this cause hereby joins issue with the defendants (*h*)

Insert the names of all the defendants who have answered or pleaded—or against whom a traversing note has been filed—or who have not been required to answer, and have not answered, the bill;

and will hear the cause on bill and answer against the defendants

Insert the names of all the defendants against whom the cause is to be heard on bill and answer;

and on the order to take the bill as confessed against the defendant G. H.

[*or as the case may be*].

(*Name, &c., of solicitor or party filing the replication: see ante*, No. 4, *or* 7.)

(*f*) See Dan. Pr. 733. For the above form, see Ord. XVII. 2. The replication is prepared by the plaintiff's solicitor; and must be written on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. The replication does not require the signature of counsel; it is filed at the Record and Writ Clerks' office; and no fee is payable on filing it: Dan. Pr. 733.

(*g*) The full title of the cause, as it stands at the time the replication is filed, must be set forth in the heading of the replication; but only the names of such of the defendants as have appeared should be inserted or referred to in the body. If a defendant's name has been misspelt by the plaintiff, and such defendant has corrected the same by his answer, but the plaintiff has not afterwards amended his bill with respect to such name, the correction should be shown in the title of the replication; as thus: "John Jones (in the bill called William Jones)"; in the body of the replication, however, the correct name only should be inserted. Where any defendant has died since the bill was filed, the words "since deceased" should follow his name in the title; but his name should be omitted in the body of the replication. The names of those defendants who are stated in the bill to be out of the jurisdiction, and who have not appeared, must be inserted in the title; but not in the body. The names of such formal defendants as have been served with a copy of the bill must be inserted in the title; but only such of them as have entered a common appearance should be named in the body: Dan. Pr. 733.

(*h*) If the plaintiff joins issue with all the defendants, their names need not be here repeated: it is sufficient, in such case, to designate them as "all the defendants"; but if he does not join issue with all, the names of the defendants with whom issue is joined must be here set out: Dan. Pr. 733.

718
Notice of filing replication (*i*).

Title, and address: see ante, No. 54.

Take notice, that I have this day filed a replication in this cause, in the form following; that is to say:

(*Set out the replication verbatim.*)

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party giving the notice: see ante*, No. 4, *or* 7.)

719.
Motion paper, for leave to serve notice of the replication out of the jurisdiction (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave to serve the defendant A. B., at (*State where; as thus:* Edinburgh, or elsewhere in Scotland), with notice of the filing of replication in this cause, together with a copy of the order to be made on the motion.

720.
Affidavit in support (*k*).

Formal parts: see ante, No. 9.

1. The plaintiff, on the —— of ——, 187—, filed replication in this cause, and thereby joined issue with the defendant A. B.

2. The defendant A. B. is now (*State where the defendant is resident, or may probably be found; as thus:* residing at or in the neighbourhood of Edinburgh in Scotland): as I know from (*Show means of knowledge*).

721
Motion paper, for substituted service of the notice (*l*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave (*State proposed mode of service; as thus:*) to insert in the London Gazette, and in two newspapers published in the county of ——, a notice of replication having been filed in this cause; and that publication thereof as aforesaid may, from the time of the insertion of the said notice in the said papers, be deemed good service thereof on the defendant T. C.

If so: and also for leave to insert, in manner aforesaid, a notice of the plaintiff's intention to read, at the hearing of this cause, the affidavit of A. B., filed ——, 187—, and the affidavit of C. D., filed ——, 187—; and that the defendant T. C. may be allowed —— weeks from the insertion of such notice for the purpose of entering into evidence.

(*i*) See Dan. Pr. 734; Ord. III. 9; XXXVII. 2. In practice, it is usual to serve the notice on all the defendants, or their solicitors, who have appeared: Dan. Pr. 734, n. (*c*).

(*k*) See Dan. Pr. 734.

(*l*) *Ibid.* For order in like case, see *Hudson* v. *Richards*, M. R., 7 July, 1870, Reg. Lib. A. 1831; and see *Lechmere* v. *Clamp*, M. R., 11 Jan. 1861, Reg. Lib. B. 261; 29 Beav. 259; and *Baur* v. *Murietta*, W. N. (1868), 408, M. R.

722.

Affidavit in support (*m*).

Formal parts: see ante, No. 9.

State the grounds for the application; as thus (*n*):—

1. The plaintiff's bill in this cause was filed on the —— of ——, 187—, against the defendant T. C.

2. The defendant T. C. absconded to avoid being served with a copy of the said bill, or other process of this honourable Court (*o*); and the plaintiff has not been able to serve the defendant T. C. with a copy of the said bill.

3. By an order dated the —— of ——, 187—, the defendant T. C. was ordered to appear to the said bill, under the 10th of the Consolidated Orders, rule 6 (*p*); and notice of the said order was directed to be inserted in the London Gazette, and in the Worcester Journal [*or as may be*].

4. The defendant T. C. having made default in appearing pursuant to the said order, the plaintiff, on the —— of ——, 187—, under an order dated the —— of ——, 187—, entered an appearance to his bill for the defendant T. C. (*q*).

5. The defendant T. C. has not entered any appearance to the said bill.

6. On the —— of ——, 187—, the plaintiff filed his replication in this cause; and thereby joined issue with the defendant T. C. [*or as may be*].

7. The plaintiff is unable to discover where the defendant T. C. now is, so as to serve him with notice of the filing of the said replication.

8. *Show means of knowledge.*

723.

Order, on summons, for leave to file a second replication (*r*).

(*Date and title.*)—Upon the application of the plaintiff: who alleged that the plaintiff, on the 10th July, 1862, filed a replication, joining issue with the defendants J. W. B. and C. F., and J. F. since deceased; that pursuant to an order dated the 14th March, 1863, the plaintiff amended his bill by adding the defendant P. R. S.: who is co-devisee with the defendant C. F. under the will of the said J. F.; that no interrogatories were filed for the examination of the said defendant P. R. S.; and that such defendant appeared to the said bill on the 6th December, 1863, as by the Record and Writ Clerk's certificate appears: This Court doth order, that the plaintiff be at liberty to file a replication in this cause, joining issue with the defendant P. R. S.

(*m*) See *ante*, No. 721, n. (*l*).

(*n*) See recitals in the order in *Lechmere* v. *Clamp*, M. R., 11 Jan. 1861, Reg. Lib. B. 261.

(*o*) See *ante*, No. 299.

(*p*) See *ante*, Nos. 298, 300.

(*q*) See *ante*, No. 301.

(*r*) *Harding* v. *Bennett*, M. R. at Chambers, 20 Jan. 1864, Reg. Lib. A.

724.
Notice of motion, or summons, by defendant, for extended time, where the filing of replication is not duly notified (*s*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the defendant A. B., that inasmuch as notice that the plaintiff had filed replication in this cause on the —— of ——, 187—, was not served on the said defendant, or his solicitor, until the —— of ——, 187—, the time for taking evidence in this cause may be computed from the last mentioned day.

Or, may be enlarged to the —— of ——, 187—.

725.
Petition of course, to amend replication, by consent (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner on the —— of ——, 187—, filed replication in this cause, and thereby joined issue with all the defendants [*or as may be*].

2. Your petitioner has since discovered the error hereinafter mentioned in the said replication: which he is desirous to amend.

Your petitioner therefore humbly prays that, by consent of the defendants, he may be at liberty to amend the said replication, by

(*State the proposed amendment; as thus:* substituting the word "Thomas" for the word "John," in the title thereof).

And your petitioner will ever pray, &c.

726.
Summons, to amend replication (*t*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that he may be at liberty to amend the replication filed by him in this cause, by

(*State the proposed amendment; as thus:* substituting the word "Thomas" for the word "John," in the title thereof).

727.
Petition of course, for leave to withdraw replication, or file a second, by consent (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed replication in this cause, and thereby joined issue with the defendants C. D. and E. F. [*or as may be*].

56. As to when a second or further replication may be filed, see Dan. Pr. 732.

(*s*) See Dan. Pr 734. For order in like case, see *Lloyd* v. *Solicitors' Life Assurance Company*, V. C. W., 1 Aug. 1855, Reg. Lib. B. 1533: 3 W. R. 640.

(*t*) See Dan. Pr. 733, 734. For form of consent, see *ante*, No. 59.

2. Your petitioner is now desirous to withdraw the said replication.

Or, to file a second replication in this cause.

Your petitioner therefore humbly prays, that, by consent of the defendants, he may be at liberty to withdraw the replication filed by him in this cause.

Or, to file a second replication in this cause to the effect that (*State what; as thus:* he joins issue with the defendant G. H.).

And your petitioner will ever pray, &c.

728.

Notice of motion, or summons, for leave to withdraw replication, or file a second (*u*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that he may be at liberty to withdraw the replication filed by him in this cause.

Or, to file a second replication in this cause, to the effect that (*State what; as thus:* he joins issue with the defendant G. H.).

729.

Summons to withdraw replication, and amend bill (*v*).

The same as No. 233, *ante*.

730.

Affidavit in support (*x*).

The same as No. 234, *ante*.

(*u*) See Dan. Pr. 733, 734. For order, on summons, to withdraw replication, see *Giles* v. *Parker*, V. C. S. at Chambers, 16 Feb. 1864, Reg. Lib. A. 296 (by consent); *Thorpe* v. *East*, V. C. J. at Chambers, 29 June, 1869, Reg. Lib. B. 3027. For order for leave to withdraw replication, and, in lieu thereof, to serve notice of motion for decree, see *Dubois* v. *Mixer*, V. C. S. at Chambers, 15 Jan. 1866, Reg. Lib. A. 29 (by consent).

(*v*) See *ante*, No. 233, n. (*s*).

(*x*) *Ibid.*, 234, n. (*t*).

CHAPTER XXII.

EVIDENCE (*a*).

SECTION I.—ADMISSIONS (*b*).

731. Admissions, by agreement (*c*).

In Chancery.

(*Title of the cause, and reference to the record.*)

Admissions on the part of the plaintiff and defendant.

It is hereby agreed, on behalf of the plaintiff and defendant respectively, to make the following admissions; and that these admissions, and the documents mentioned or referred to therein, may be used and read in evidence upon the hearing of this cause, and for all the purposes thereof: save and except all just causes of exception to the admissibility of the same as evidence; that is to say:—

1. That the several deeds specified in the first schedule hereto, and identified by our respective initials thereon, are the deeds of

(*a*) As to evidence, generally, see Dan. Pr. 738—826. As to the *onus probandi*, see Dan. Pr. 747—749; 1 Phill. on Evid. 552; Taylor, s. 337, *et seq.*; Roscoe, 104—106; Best, ss. 369—380; Gresley, 388; Starkie, 586; Powell, 237—244. As to presumptions of law, see Dan. Pr. 748; 1 Phill. on Evid. 467, *et seq.*; Taylor, s. 61, *et seq.*; Roscoe, 1316—1318; Best, s. 461, *et seq.*; Gresley, 473; Powell, 61—79. As to confining the proofs to matters in issue, see Dan. Pr. 278, 749—755; Taylor, s. 239, *et seq.*; Best, s. 349, *et seq.*; Gresley, 230, *et seq.*; Powell, 253. As to proving the substance of the case, see Dan. Pr. 752; Taylor, s. 173, *et seq.*; Best, ss. 147, 381; Gresley, 239; Powell, 245, *et seq.* As to the effect of a variance, see Dan. Pr. 755—757; and as to variance generally, see 1 Phill. on Evid. 569, *et seq.*; Taylor, s. 172, *et seq.*; Roscoe, 1373, 1374; Best, s. 389; Gresley, 242; Powell, 253. As to the best evidence, see Dan. Pr. 757; 1 Phill. on Evid. Chap. IX.; Taylor, ss. 363—397; Best, ss. 75, 101, 144, 399; Gresley, 247; and as to hearsay, see 1 Phill. Chap. VIII.; Taylor, ss. 507—542; Roscoe, 1239—1242; Best, s. 117; Hubback, 648—711; Gresley, 304—325; Powell, 111—190.

(*b*) As to admissions, see Dan. Pr. 738—747; Ord. III. 11; Taylor, s. 653, *et seq.*; Roscoe, 1139—1142; Best, s. 658, *et seq.*; Gresley, Pt. I. Chaps. 1, 2; Powell, 191, *et seq.*

(*c*) See Dan. Pr. 746. All written admissions of evidence whereon any order is founded must be indorsed by the Registrar, and then be filed at the Report office, and a note thereof made on the order, by the Clerk of Reports: Ord. I. 44; XXIII. 23; Dan. Pr. 747. For the form of entering admissions, see Seton, 24. As to admissions under 21 & 22 Vic. c. 27, see *post*, Nos. 745—747.

the like respective dates mentioned in the pleadings of this cause; and that the said deeds were respectively executed as they respectively purport to have been,

2. That the several letters specified in the first part of the second schedule hereto, and identified by our respective initials thereon, were respectively signed as they purport to have been; and were received in due course by the respective persons to whom such letters respectively purport to be addressed, with the enclosures in such letters referred to, from the persons by whom such letters respectively purport to have been written.

3. That the paper writing marked A., identified by our respective signatures at the foot thereof, contains true copies of the several letters specified in the second part of the second schedule hereto; and that the originals of such letters respectively were duly signed as they purport to have been, and were received, in due course (*Continue as in par.* 2, *to the end*).

4. That the copies of letters contained in the said paper writing marked A., or any of them, may be read in evidence as primary and the best evidence, and not as secondary evidence, and shall have the same force as if they were the originals of such letters; and that the said original letters shall not be required to be produced, or any evidence required as to the same, or of the proper custody thereof, or as to the non-production thereof.

5. That A. B., in the bill named, died on the —— of ——, 186—, intestate, and without having been married.

6. That the defendant C. D. is the eldest son and heir at law of E. F., in the said bill named.

7. That the defendant C. D. is the heir of the said E. F., according to the custom of the manor of W.

We also undertake to produce, for the purposes aforesaid, or any of them, on the hearing of this cause, and otherwise as occasion may require, such of the documents specified in the schedules hereto as are in our possession respectively. Dated this —— day of ——, 187—.

T. B., plaintiff's solicitor [*Or*, agent].
J. F., defendant's solicitor [*Or*, agent].

THE FIRST SCHEDULE ABOVE REFERRED TO.

Deeds.

Serial Number.	Dates.	Description.	Parties.
1	1854. January 1	Lease . . .	A. B. one part, and C. D. other part.
2	1861. December 31	Conveyance .	E. F. first part, G. H. second part, and J. L. third part.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Letters.

Serial Number.	Dates.	By whom written.	To whom sent.
		First part.	
3	1863. April 1.	Defendant . . .	Plaintiff.
4	,, May 10.	J. F., defendant's solicitor . .	T. B., plaintiff's solicitor.
		Second part.	
5	1863. April 12.	L. M.	N. O.
6	,, May 18.	P. R.	S. T.

732. Another form of admissions, by agreement(*d*).

In Chancery.

(*Title of the cause, and reference to the record.*)

We, the undersigned solicitors for the plaintiff and defendants respectively, hereby agree to admit upon the hearing of this cause, and for all the other purposes of this suit, that such of the documents mentioned in the schedule hereto as are therein specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such of the said documents as are therein specified as copies are true copies; and that such of the said documents as are therein stated to have been served, sent or delivered, were so served, sent or delivered respectively: saving all just exceptions to the admissibility of all such documents as evidence in this suit.

(*Dated and signed, as in* No. 731, *ante.*)

The schedule above referred to.

Originals. } (*Describe the documents: see*
Copies. } No. 745, *post.*)

(*d*) See *ante*, No. 731, n. (*c*).

Section II.—Documentary evidence which proves itself (*e*).

733.

Certificate, verifying extract from a parish register (*f*).

I, A. B., the rector [*Or*, vicar—*Or*, curate] of the parish [*Or*, chapelry] of ——, in the county of ——, do hereby certify, that the foregoing is a true copy of an entry in the register book of baptisms [*Or*, marriages—*Or*, burials] kept for the said parish [*Or*, chapelry] for the year 18—. Dated this —— day of ——, 187—.

A. B.

(*e*) See generally, Dan. Pr. 757—770. And see as to the proof of:—Acts and journals of parliament, and proclamations: Dan. Pr. 757; 8 & 9 Vic. c. 113, s. 3; 13 & 14 Vic. c. 21, s. 7; 2 Phill. on Evid. 135, 194; Taylor, ss. 1368, 1371, 1372; Roscoe, 106. Private Acts of Parliament: Dan. Pr. 758, n. (*y*); Taylor, s. 1368; Hubback, 613. Records of Courts of Justice: Dan. Pr. 758; 2 Phill. on Evid. 197; Taylor, ss. 409, 1378; Roscoe, 109. British proclamations, orders and regulations: 31 & 32 Vic. c. 37 (Documentary Evidence Act, 1868); and see 32 & 33 Vic. c. 14, s. 12 (5); *ib.*, c. 75, s. 83; *ib.*, c. 79, s. 21. British treaties, charters, letters patent, grants from the Crown, pardons and commissions: Taylor, s. 1371. General records of the realm, in the custody of the Master of the Rolls: 1 & 2 Vic. c. 94, ss. 12, 13; Taylor, s. 1377. Documents belonging to the Common Law side of the Court of Chancery: 12 & 13 Vic. c. 109, ss. 11, 13; Taylor, s. 1385. Foreign and colonial acts of state, judgments, &c.: Dan. Pr. 760; 14 & 15 Vic. c. 99, s. 7; Taylor, ss. 1372, 1398; Roscoe, 88, 129—131. Foreign law: Dan. Pr. 760; Taylor, ss. 1280, 1281, 1370; Roscoe, 129—131; and *post*, No. 1098, *et seq.* Registers and certificates of registry of British vessels: 14 & 15 Vic. c. 99, s. 12.; 17 & 18 Vic. c. 104, s. 107; Dan. Pr. 760; Taylor, s. 1451. Scotch bankruptcy proceedings: 19 & 20 Vic. c. 79, ss. 47, 73, 140, 147, 174; Taylor, ss. 10 *b.*, 1400. As to when certified copies or extracts from books or other documents of a public nature are admissible in evidence, see Dan. Pr. 760; 14 & 15 Vic. c. 99, s. 14; and see 8 & 9 Vic. c. 113, s. 1; and as to obtaining copies or extracts from such documents, see 14 & 15 Vic. c. 99, s. 14; Dan. Pr. 761, n (*o*). As to certified copies or extracts of letters patent, &c., see Dan. Pr. 761; 16 & 17 Vic. c. 115, s. 4. For a list of public books and documents, the contents of which are now proveable, either by examined or by certified copies, under 14 & 15 Vic. c. 99, s. 14, see Taylor, s. 1438. For a list of the principal public registers and documents, certified copies of which are receivable in evidence by virtue of some enactment having special reference to them, see Taylor, ss. 1439, 1440. As to the statutable methods of proof of records or other proceedings of particular tribunals, or of public records and documents, see Taylor, s. 1391, *et seq.* As to the proof of certificates, under statutes having special reference to them, see Taylor, s. 1441, *et seq.*; and see 33 & 34 Vic. c. 14, s. 12. As to proof of documents thirty years old, see Dan. Pr. 769; 2 Phill. on Evid. 245; Taylor, 74, 75; Roscoe, 146.

(*f*) See Dan. Pr. 761. And see—as to the admissibility in evidence of certified extracts from parish registers: Dan. Pr. 760, 761; Roscoe, 133, 220; 14 & 15 Vic. c. 99, s. 14; of copies of entries under the General Registry Act, 6 & 7 Will. IV. c. 86, s. 38: Dan. Pr. 761; Roscoe, 134, 221; of certified

734.
Certificate, verifying copy of a record of the Court of Chancery (*g*).

Pursuant to the Act 14 & 15 Victoria, cap. 99, I hereby certify the above to be a true copy of the record in my custody.

X. Y.,
Clerk of Records and Writs of the High Court of Chancery in England.

735.
Motion paper, for leave to use, at hearing, evidence taken in another cause (*h*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for leave, at the hearing of this cause, to read and make use of the following documents; namely (*Describe the documents; as thus:* the affidavit of C. D., filed the ——, 187—, and the deposition of E. F., filed the ——, 187—, in a certain cause in this Court of A. *v.* W. (1869, A. No. 50), or office copies thereof): saving all just exceptions.

736.
Petition of course, for the like (*h*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

Issue has been joined in this cause [*or as may be*]; and your petitioner is advised that it is material and necessary to his case to use, as evidence at the hearing of this cause, the documents hereinafter mentioned.

Your petitioner therefore humbly prays, that he may be at liberty, at the hearing of this cause, to read (*Continue as in* No. 735, *ante, to the end*).

And your petitioner will ever pray, &c.

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extracts from non-parochial registers deposited with the Registrar-General, under 3 & 4 Vic. c. 92, ss. 9—15: 2 Phill. on Evid. 145; Taylor, s. 1440; and as to extracts from the district registries: Dan. Pr. 761, n. (*q*). As to the registries of burials in cemeteries, see 10 & 11 Vic. c. 65, ss. 32, 33; 27 & 28 Vic. c. 97; Dan. Pr. 761, n. (*p*); Hubback, 505; and as to the penny stamp duty on certificates of birth, &c., see the Stamp Act, 1870 (33 & 34 Vic. c. 97), ss. 3, 80, and Sched.

(*g*) See 14 & 15 Vic. c. 99, s. 14; 18 & 19 Vic. c. 134, s. 6; Dan. Pr. 760, 763, 768, n. (*m*), 879, n. (*i*).

(*h*) See Dan. Pr. 764, 767; Ord. XIX. 4, 5. For order in like case on motion, see Seton, 1275; and on petition of course, see *Richards* v. *French*, M. R., 9 Dec. 1869, Rolls' Lib.; *Pilcher* v. *Rawlins*, M. R., 14 June, 1870, Rolls' Lib.; *Hall* v. *Hargreaves*, M. R., 30 June, 1870, Rolls' Lib. And see—as to the admissibility in evidence of depositions of witnesses in other courts: Dan Pr. 762; of proceedings in chancery: *ib.*, 763; and of decrees, orders and proceedings in another cause: *ib.*, 763, 764; see also Phill. on Evid. 210, 211; Taylor, ss. 1413, 1415. For forms of application for leave to use, on inquiries in Chambers, the evidence taken in other suits, see *post*, chap. XXIX. s. 1 (3).

737.

Summons, for the like (*i*).

Formal parts : see ante, No. 60.

on the part of the plaintiff, that upon the plaintiff or defendants giving to the other of them notice in writing of his or their intention in this behalf, they or either of them may be at liberty to read and use at the hearing of this cause, and in all subsequent proceedings therein, all or any of the affidavits filed or to be filed, and depositions, or cross-examinations, if any, taken, or to be taken, in a cause wherein the W. & C. of M. are plaintiffs, and the above named defendants are defendants, as if the same had been filed or taken in this cause : saving all just exceptions to the admissibility of the whole or any of such affidavits, depositions, or cross-examinations, if any, as evidence at the hearing of this cause, and the subsequent proceedings therein.

738.

Memorandum bespeaking attendance in the Court or its offices, with documents deposited in the Record and Writ Clerks' office (*k*).

In Chancery.

(*Short title, and reference to the record.*)

For attendance with (*Describe the documents; as thus:*

all the documents deposited by the defendant A. B., pursuant to the order of the —— of ——, 187—),

in the Court [*Or*, Chambers] of his lordship the Master of the Rolls [*or as may be*], on the —— of ——, 187—, at —— of the clock in the —— noon in this cause [*or as may be*].

Dated this —— day of ——, 187—,

(*Name, &c., of solicitor or party bespeaking the attendance : see ante*, No. 4, *or* 7.)

739.

Motion paper, for production elsewhere of documents so deposited (*l*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the proper officer may be directed to attend (*State where, when, and on what proceeding; as thus :*

the Court of Queen's Bench at Westminster Hall, on the ——, 187—, at —— o'clock in the forenoon, and so from time to time until the action "Jones *v.* Davies" shall have been tried),

(*i*) *Dent* v. *Auction Mart Co., Limited*, V. C. W. at Chambers, 27 Nov. 1865, Reg. Lib. A. 2298 (by consent); and see *Ridgway* v. *Ridgway*, M. R. at Chambers, 28 Feb. 1870, Reg. Lib. B. 725; and *post*, No. 792. For order for plaintiffs and defendants, in each of two causes, to read at the hearing the evidence taken in the other of them, saving all just exceptions, see *Lord Kensington* v. *Metropolitan Railway Company—Williams* v. *Same*—M. R. at Chambers, 8 Jan. 1866, Reg. Lib. A. 11 (by consent).

(*k*) See Dan. Pr. 768. A fee of 10*s.* is payable, in fee fund stamps, upon every application for the officer's attendance in a Court of Equity, and for his attendance per diem : Regul. to Ord. Sched. 4; *post*, Chap. XXXI. The stamps are impressed on, or affixed to, the memorandum bespeaking the attendance.

(*l*) See Dan. Pr. 768, 769.

and produce the following documents (*Describe the documents to be produced; as thus:*

two indentures, dated respectively the —— of ——, 187—, and the —— of ——, 187—, deposited by the defendant A. B. in Court, pursuant to an order dated the ——, 187—).

An affidavit in support accompanies.

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740. Petition of course, for the like (*m*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

Show the necessity for production of the original documents; as thus:

1. An action "Jones *v.* Davies" has been brought by your petitioner in Her Majesty's Court of Queen's Bench at Westminster, against C. D.; and such action has been set down for trial at the sittings after the present Trinity Term, to be holden at Westminster Hall, for the said Court.

2. Your petitioner is advised that it is material and necessary for his case that he should produce to the Court and jury on the trial of the said action the several documents hereinafter mentioned; and that certified or examined copies of the said documents will be insufficient for the purpose.

Your petitioner therefore humbly prays, that the proper officer may be directed to attend (*Continue as in* No. 739, *ante, to the end*).

And your petitioner will ever pray, &c.

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741. Affidavit in support of the motion or petition (*n*).

Formal parts: see ante, No. 9.

1. *Show the necessity for production of the original documents: see statements in* No. 740, *ante.*

2. *Show means of knowledge.*

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742. Memorandum bespeaking attendance with the documents, in like case (*o*).

In Chancery.

(*Short title, and reference to the record.*)

For attendance with (*Describe the documents; see* No. 739, *ante*), before (*Describe where, and when; as thus:* the Court of Queen's Bench, at Westminster Hall, on the —— of ——, 187—, on the trial of the action Jones *v.* Davies). Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party bespeaking the attendance: see ante*, No. 4, *or* 7.)

(*m*) See Dan. Pr. 768, 769. For orders, on petition, to produce documents in a Court of Common Law, at Westminster, see *The English Joint Stock Bank Limited*, M. R., 2 July, 1870, Rolls' Lib.; at the Assizes, see *Wilkes* v. *Guardians of the Poor of Dudley Union*, M. R., 19 July, 1870, Rolls' Lib.; and in the Court of Bankruptcy, see *Bell* v. *Smith*, M. R., 3 Dec. 1869, Rolls' Lib.

(*n*) See Dan. Pr. 768, 769.

(*o*) *Ibid.* A fee of £1 is payable on every application for the officer's attendance in Courts of Law, per diem, and for his attendance, besides his reasonable expenses: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. These ex-

Section III.—Documentary Evidence which does not prove itself (*p*).

743.
Notice of intention to adduce in evidence a probate, &c., as proof of a testamentary disposition of real estate (*q*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*or as may be*] intends, at the hearing of this cause [*or other proceeding: to be here described*], to give in evidence as proof of the devise or testamentary disposition in his favour of the estate called Whiteacre, in the plaintiff's bill mentioned [*or as may be*], by the will of C. D., in the said bill named, the probate of the said will,

Or, letters of administration with the said will annexed,

Or, a copy (*r*) stamped with a seal of the Court of Probate, of the probate, *&c.*,

granted by Her Majesty's Court of Probate, Principal Registry [*Or*, District Registry of ——], on the —— day of ——, 187—, to the said plaintiff [*or as may be*].

744.
Notice of intention to dispute validity of such disposition (*q*).

Formal parts: see ante, No. 54.

Take notice, that the defendant A. B. [*or as may be*] intends, at the hearing of this cause [*or other proceeding: to be here described*], to dispute the validity of the devise or testamentary disposition in favour of the plaintiff [*or as may be*], of the estate called Whiteacre, in the plaintiff's bill mentioned, by the will of C. D., in the said bill named [*or as may be*], and referred to in your notice, dated the —— day of ——, 187—, in this cause, directed to me [*or as may be*].

745.
Notice to admit documents (*s*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Take notice, that the plaintiff

Or, defendant—*Or*, petitioner—*Or*, respondent

proposes to adduce in evidence, on the trial in this cause [*Or*,

penses are: one guinea per day, and travelling expenses (first class), if the attendance is in the country; and half-a-guinea per day, without travelling expenses, if the attendance is in a Court of Law in London or Middlesex. The office fees are paid in fee fund stamps. The officer's expenses are paid to him in money; and he may require the solicitor or party desiring his attendance to deposit with him a sufficient sum to cover his just fees, charges, and expenses, and undertake to pay any further fees, &c., not fully answered thereby: Dan. Pr. 769, n. (*s*); Braithwaite's Pr. 513, 514; Ord. I. 43.

(*p*) See, generally, Dan. Pr. 770—776; 2 Phill. on Evid. 242, *et seq.*; Taylor, ss. 1368—1472, 1660—1679; Best, ss. 297—346; Gresley, 173, *et seq.*

(*q*) See Dan. Pr. 773; 20 & 21 Vic. c. 77, s. 64; Williams' Exors, 538.

(*r*) As to office copies of wills, see Dan. Pr. 773, n. (*n*).

(*s*) See Dan. Pr. 775, 776; 21 & 22 Vic. c. 27, s. 7; Ord. XLI. 39, and Sched. N. No. 6 thereto. For the practice at law as to a like notice, see Taylor, ss. 704—707; Chitty's Arch. 319—323; Chitty's Forms, 139—143. As

matter], the several documents hereunder specified, and that the same may be inspected by the defendant,

Or, plaintiff—*Or*, respondent—*Or*, petitioner,

his solicitor or agent at (*State where*; *as thus:* our office, situate No. 18, New Square, Lincoln's Inn, Middlesex), on (*State when*; *as thus:* Monday, the 3rd of March, 1871), between the hours of (*State what*; *as thus:* eleven o'clock in the forenoon, and four o'clock in the afternoon). And the defendant

Or, plaintiff—*Or*, respondent—*Or*, petitioner

is hereby required, within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered, respectively: saving all just exceptions to the admissibility of all such documents as evidence on such trial.

Dated this —— day of ——, 187—.

G. H., solicitor [*Or*, agent] for the defendant
[*Or*, plaintiff—*Or*, respondent—*Or*, petitioner].

To Mr. E. F., solicitor [*Or*, agent] for the plaintiff.
[*Or*, defendant—*Or*, petitioner—*Or*, respondent.]

(*Here describe the documents: the description may be as follows:*)

ORIGINALS.

Serial Number.	Description of the Documents.	Dates.
1	Deed of Covenant between A. B. & C. D., 1st part, and E. F., 2nd part	1st January, 1848.
2	Indenture of Lease from A. B. to C. D.	1st February, 1848.
3	Indenture of Release between A. B. & C. D., 1st part, &c. . . .	2nd February, 1848.
4	Letter from defendant to plaintiff .	1st March, 1848.
5	Policy of Insurance on goods . .	3rd December, 1848.
6	Bill of Exchange for £100 at 3 months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	1st May, 1840.

to obtaining an extension of the time allowed to admit, and as to withdrawing an admission inadvertently made, see Chitty's Forms, 142, n. As to objections for want of a stamp, see Dan. Pr. 776; Stamp Act, 1870 (33 & 34 Vic. c. 97), s. 16.

COPIES.

Serial Number.	Description of Documents.	Dates.	Original or Duplicate, served, sent, or delivered, when, how, and by whom.
7	Register of baptism of A. B., in the parish of X. . . .	1st January, 1808 .	
8	Letter from plaintiff to defendant . .	1st February, 1848.	Sent by General Post, 2nd February, 1848.
9	Notice to produce papers .	1st March, 1848 . .	Served 2nd March, 1848, on defendant's solicitor by E. F., of —.
10	Letters Patent of King Charles Second, in the Public Record Office.	1st January, 1665 .	

746.

Admission thereupon (*t*).

I hereby make the admission required to be made by the within notice.

If part only of the documents are admitted, qualify the admission; as thus: so far as relates to the documents distinguished therein by the numbers 1. 2. 3, *&c.;* and I decline to make any other of the admissions required by the said notice.

Dated this —— day of ——, 187—.

E. F., solicitor [*Or*, agent] for the defendant [*or as may be*].

747.

Affidavit of service of the notice; and of refusal to admit (*t*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served Mr. E. F., the solicitor [*Or*, agent] in this cause for the defendant A. B. [*or as may be*], with the notice in writing dated the —— of ——, 187—, now produced and shown to me (*u*), and marked A., and addressed to (*State whom*), and purporting to be a notice to admit documents in this cause: by delivering a true copy of the said notice to, and leaving the same with,

If personally, say: the said E. F., at (*State where*).

Or, if not personally, say: the clerk [*Or*, servant—*or as may be*] of the said E. F., at his office [*Or*, address for service], situate at (*State where*).

(*t*) See Dan. Pr. 776; Chitty's Forms, 142.

(*u*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43.

2. The said E. F. inspected the documents specified in the said notice, at the time and place mentioned in such notice.

Or, The said E. F. has inspected the documents specified in the said notice since the aforesaid service thereof.

Or, The said E. F. has not, nor has the said defendant [*or as may be*], or any other person on his behalf, inspected the documents specified in the said notice, or any of them, since the aforesaid service of the said notice.

3. The said defendant [*or as may be*], and his solicitor [*Or*, agent] in this cause, have refused or neglected to admit the said documents, or any of them, as required by the said notice; and no admission of the said documents, or any of them, hath in fact been made by the said defendant, or by any person on his behalf [*or as may be*].

4. *Show means of knowledge.*

748.

Notice to produce documents (*x*).

Formal parts: see ante, No. 54.

Take notice, that you are hereby required to produce to the Court, at the hearing of this cause [*or as may be*], the following documents, that is to say: (*Describe the documents: For forms of description, see ante*, No. 745); and all other deeds, documents, letters, books, papers, and writings whatsoever containing any entry, memorandum, or minute, or other matter, in any wise relating to the matters in question in this cause.

749.

Affidavit of service thereof (*x*).

The same as No. 747, par. 1, *ante*; but substitute "produce," for "admit."

750.

Affidavit by defendant, verifying his answer (*y*).

Formal parts: see ante, No. 9.

1. All the statements in my answer filed in this cause on the —— day of ——, 187—, so far as the same relate to or concern my own acts and deeds, are true to the best of my knowledge, and all the statements in my said answer, so far as the same relate to or concern the acts and deeds of any other person or persons therein named, are true to the best of my belief.

2. I crave leave to refer to my said answer, and the statements therein contained, as evidence on my behalf, at the hearing of this cause, as if the same were repeated in this affidavit.

(*x*) See Dan. Pr. 774, 775; Chitty's Forms, 145. For form of notice to produce, on a trial before the Court by, or without, a jury, see *post*, No. 1069.

(*y*) See *Bank of London* v. *Tyrrell* (1857, L. No. 120); and Dan. Pr. 743, n. (*p*).

751.

The like, as corrected by affidavit (*z*).

Formal parts: see ante, No. 9.

The contents of my answer, filed the —— day of ——, 187—, to the plaintiff's (amended) bill in this cause are true, except so far as the same are corrected by my affidavit filed in this cause on the —— day of ——, 187—.

752.

Affidavit of execution of a deed, and proving handwriting of other documents (*a*).

Formal parts: see ante, No. 9.

1. I saw (*Describe the party; as thus:* the plaintiff A. B. *Or*, the defendant C. D.—*Or*, E. F., the testator in the pleadings of this cause named—*or as may be*) sign, seal, and as his act and deed deliver, the indenture [*Or*, deed poll], dated the —— day of ——, 187—, and marked A., now produced and shown to me (*b*), and purporting to be (*Describe, shortly, what; as thus:* a settlement on the intended marriage of the said plaintiff).

2. The signature "——," set and subscribed to the said indenture [*Or*, deed poll], as the party [*Or*, one of the parties] executing the same, is of the proper handwriting of the said plaintiff [*or as may be*].

3. The signature "——," set and subscribed to the attestation indorsed on the said indenture [*Or*, deed poll], of the execution thereof by the said plaintiff [*or as may be*], is of my proper handwriting.

4. I am well acquainted with the handwriting of the plaintiff A. B. [*or as may be*]: having seen him write.

5. The (sixteen) several letters marked respectively C., D., E., F., *&c.*, now produced and shown to me (*b*), and dated respectively the ——, 187—, *&c.*, are of the proper handwriting of the said A. B., and are respectively signed by him [*or as may be*].

6. The signature "——," to the agreement dated the ——, 187—, marked G., now produced and shown to me (*b*), is also of the proper handwriting of the said A. B.

753.

Affidavit, verifying copy of correspondence, and loss of a document (*c*).

Formal parts: see ante, No. 9.

1. The document marked C., now produced and shown to me (*b*), is a copy of a correspondence (*Describe it; as thus:* between me and Messrs. A. B. & Co., the plaintiff's solicitors in this cause), having reference to the subject matter of this suit: omitting signatures and other formal parts of such correspondence.

(*z*) See Dan. Pr. 743, n. (*p*).

(*a*) As to when proof, by the attesting witness, of the execution of a deed is necessary, see Dan. Pr. 775. As to other modes of proof of deeds and other documents, see *ib.*; 17 & 18 Vic. c. 125, s. 26. For forms of affidavit proving particular facts, see *Index*, AFFIDAVIT.

(*b*) Exhibit same. For form of memorandum thereof, see *ante*, No. 43.

(*c*) As to secondary evidence of the contents of documents, see Dan. Pr. 774, 775.

2. On or about the —— of ——, 187—, I received a letter from the defendant A. B. I have lately made diligent search for the said letter, but I have been unable to find it, and I do not know what has become thereof.

3. The paper writing marked A., now produced and shown to me (*d*), is a true copy of the said letter: as I know from (*Show means of knowledge*).

754.

Affidavit by a short hand writer, verifying transcript of his notes (*e*).

Formal parts: see ante, No. 9.

1. In pursuance of instructions received by me from Messrs. A. & B., of ——, the solicitors in this cause for (the plaintiff), I attended, on the —— of ——, 187—, at the office of C. O., esquire, one of the examiners of this honourable Court, situate in Rolls' Yard, Chancery Lane [*or as may be*], and I then and there took short hand notes of (*State what; as thus:* the cross-examination of the defendant S. T., on his affidavit filed in this cause the —— day of ——, 187—).

2. The paper writing marked A., now produced and shown to me (*d*), is a transcript of my said notes; and is a true and correct statement of the proceedings before the said examiner on the said cross-examination [*or as may be*].

Section IV.—Proving Exhibits at the Hearing under an Order.—Procuring attendance of witnesses in Court (*f*).

755.

Motion paper, for leave to prove exhibits at the hearing (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave, at the hearing of this cause [*or as may be*], to prove by affidavit, or *vivâ voce* the (*Describe what; as thus:*

execution of the deeds specified in the first part of the annexed schedule; and the handwriting of the letters specified in the second part thereof):

saving all just exceptions.

The Schedule.

First part. } (*Describe the documents:*
Second part. } *see* No. 745, *ante*.)

(*d*) Exhibit same. For form of memorandum thereof, see *ante*, No. 43.

(*e*) See Dan. Pr. 808, n. (*r*).

(*f*) As to the documents which may be proved *vivâ voce* at the hearing, and the mode of proof, see Dan. Pr. 777—781; and see 13 & 14 Vic. c. 35, s. 28; and Seton, 14. For form of affidavit to prove exhibits at the hearing, see *ante*, No. 752. As to the power of the Court to require the production and examination of witnesses before itself, See Dan. 780, 808, 840; 15 & 16 Vic. c. 86, s. 39.

(*g*) See Dan. Pr. 779. For order in like case on motion, see Seton, 1237,

756.

Petition of course, for leave to prove exhibits at the hearing (*h*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *Describe the state of the cause; as thus:* Issue has been joined in this cause; the time for taking evidence therein has expired; and the cause has been set down for hearing.

Or, This cause has been set down for hearing on bill and answer.

2. Your petitioner is advised to prove by affidavit, or *vivâ voce*, at the hearing of this cause [*or as may be*], the documents specified in the schedule hereto.

Your petitioner therefore humbly prays, that he may be at liberty, at the hearing of this cause [*or as may be*], to read an affidavit or affidavits, or to examine a witness or witnesses *vivâ voce*, to prove the documents hereinafter mentioned, that is to say: (*State what; as thus:*

the execution of the deeds specified in the first part of the said schedule; and the handwriting of the letters specified in the second part thereof):

saving all just exceptions.

And your petitioner will ever pray, &c.

The Schedule above referred to.

First part. } (*Describe the documents:*
Second part. } *see* No. 745, *ante.*)

757.

Oath, or affirmation, of a witness, called merely to prove a deed or document (*i*).

See Nos. 772—779, *post.*

No. 3; and on petition, see *Jegon* v. *Vivian*, M. R., 17 Dec. 1869, Rolls' Lib.; *Feltham* v. *Turner*, M. R., 2 July, 1870, Rolls' Lib. The order must be served on the adverse solicitor two days previous to the hearing: Dan. Pr. 780. The documents to be proved should be minutely described; as: if a deed, the date and parties' names; if a letter, the date, and the names of the persons by whom it was written, and to whom it was addressed: Dan. Pr. 780, n. (*i*); Gresley, 188. The order should be entered as read in the decree: Dan. Pr. 780, n. (*n*). For forms of oath or affirmation of a witness examined in Court, see *post*, Nos. 772, *et seq.*

(*h*) See *ante*, No. 755, n. (*g*).

(*i*) See Dan. Pr. 780; Oaths in use in Court of Chancery, 3, 4.

758.
Questions put to such witness (*k*).

1. *Where the person called is the attesting witness:*
Is that your name and handwriting?
Is that the handwriting of C. D. (*l*).
Did you see him sign and seal, and deliver this deed, as his act and deed?
Or, Did you see him sign this document?

2. *Where the person called is not the attesting witness:*
Are you acquainted with the handwriting of C. D., of, *&c.* (*m*).
Is that the handwriting of C. D.?

759.
Indorsement, by the Registrar, on deed or document exhibited (*n*).

(*Name of Judge.*) ——, 187—.
(*Short title of cause or matter, and reference to the record, if any.*)
This deed [*Or*, document] was produced at the hearing of this cause [*Or*, matter—*or as may be*], and its execution by [*Or*, the handwriting of] C. D. proved by A. B.

E. F., Registrar.

760.
Motion paper, for leave to issue a *subpœna*, for the attendance in Court of a witness (*o*).

Formal parts: see ante, No. 53.
To apply on behalf of the plaintiff [*or as may be*], that a *subpœna* may issue for the attendance in Court of A. B., on the hearing of this cause [*or as may be*].

761.
Direction to issue the *subpœna* (*o*).

Master of the Rolls.
[*Or*, Vice-Chancellor ——.]
(*Short title.*)
Let a *subpœna* issue for the attendance in Court of A. B.

C. D., Registrar.

(*k*) See Dan. Pr. 780; Oaths in use in Court of Chancery, 3, 4. The questions are put by the Registrar.

(*l*) The person whose signature to the deed or document is to be proved.

(*m*) The address and description, if any, of the person whose signature is to be proved should be here read from the deed or document.

(*n*) See Dan. Pr. 780; Oaths in use in Court of Chancery, 4. When the proof is adduced by affidavit, instead of *viva voce*, the order and exhibit must be produced with the affidavit: Dan. Pr. 780.

(*o*) See Dan. Pr. 808; Braithwaite's Pr. 254, 255.

762.

Præcipe for the *subpœna* (*p*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a *subpœna ad test.* (*If so:* and *duces tecum*), on behalf of the plaintiff [*or as may be*], directed to (*Insert names of the witness or witnesses*).

If sealed under an order, add: Order dated the —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

763.

The *subpœna* (*q*).

Victoria, (*&c.: see ante*, No. 313).

To (*Insert names of the witness or witnesses*), greeting:

We command you (*If more than one, add:* and every of you) that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before our Lord High Chancellor,

Or, before his lordship the Master of the Rolls—*or as may be*,

at such time and place as the bearer hereof shall by notice in writing (*r*) appoint, to testify the truth according to your knowledge in a certain suit now depending in our High Court of Chancery, wherein A. B. is plaintiff and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

on the part of the plaintiff [*Or*, defendant C. D.—*or as may be*]:

(*p*) See Dan. Pr. 780, 808; Braithwaite's Pr. 253. For the practice as to procuring the attendance of witnesses in Court, or before an examiner, see Dan. Pr. 780, 801, 802, 808. For the mode of issuing and serving a writ of *subpœna*, and notifying the time, or time and place, of attendance, see Dan. Pr. 780, 802, 803; and as to the tender of expenses, see *ib.* 780, 803. For scale of allowances to witnesses, see *post*, Chap. XXXI. A *subpœna* may be corrected and re-sealed between suing out and service, on leaving a corrected *præcipe*, marked "altered and re-sealed," and signed with the name and address of the solicitor suing out the same: Ord. XXVIII. 5; Dan. Pr. 803.

(*q*) See Dan. Pr. 780. The form here given is that prescribed by Ord. XXVIII. 2, and Sched. N. No. 2, thereto, subject to such alterations and variations as circumstances may require: *ib.* A *subpœna ad test.* is to contain three names where necessary or required: Ord. XXVIII. 3. Not more than three names are to be included in one *subpœna duces tecum*; and the party suing out the same is at liberty to sue out a *subpœna* for each person, if it is deemed necessary or desirable: *ib.* r. 4; Dan. Pr. 802. For the form of calling a witness on his *subpœna*, and of endorsement thereon of his non-appearance, see *post*, Nos. 1084, 1085.

(*r*) See *post*, No. 765.

In the case of a subpœna duces tecum, add: and that you then and there bring with you and produce (*Specify the documents to be produced* (*s*):

And hereof fail not at your peril. Witness (*&c.: Conclude as in* No. 313, *ante*).

764.

Indorsement on the writ (*t*).

The same as *ante*, No. 4, or 7.

765.

Notice to witness, of time and place of attendance (*u*).

Formal parts: see ante, No. 54.

Take notice, that you are required to attend before the Lord High Chancellor [*Or*, his lordship the Master of the Rolls—*or as may be*], at (*State where; as thus:* his Court in Lincoln's Inn, London—*Or*, in Rolls' Yard, Chancery Lane, London), on —— the —— day of ——, 187—, at —— of the clock in the —— noon, to give evidence on the part and behalf of the above named plaintiff [*Or*, defendant A. B.—*or as may be*].

766.

Motion paper, for a *habeas*, for attendance in Court of a witness (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, [*Or*, defendant A. B.], that a *habeas* may issue directed to the keeper of the City of London prison at Holloway [*or as may be*], to bring E. F. before the Court, on the hearing of this cause: to be examined as a witness for the plaintiff, *&c.*

Or, for cross-examination on his affidavit—*Or*, *ex parte* examination—filed ——, 187—: notice to produce him for that purpose having been given to the plaintiff [*Or*, defendant (*y*)].

An affidavit in support, and the keeper's certificate of custody, accompany.

767.

Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

1. *Show state of the cause; as thus:* Replication has been

(*s*) For the mode of describing documents, see *ante*, No. 745; and as to the degree of particularity with which the documents must be described, see *Attorney General* v. *Wilson*, 9 Sim. 526; *Newland* v. *Steer*, 11 Jur. N. S. 596; 13 W. R. 1014, V. C. K.; *Lee* v. *Angas*, Law Rep. 2 Eq. 59, V. C. W.; Dan. 802, n. (*k*).

(*t*) See Dan. Pr. 780.

(*u*) *Ibid.*; and see *ante*, No. 763.

(*x*) See Dan. Pr. 780, 805.

(*y*) *Cusack* v. *Henry*, M. R., 14 July, 1865, Reg. Lib. A. 1379.

filed in this cause, and the time for taking evidence therein has expired.

2. *Show grounds for requiring the attendance of the prisoner; as thus:* E. F., now a prisoner in the City of London prison at Holloway [*or as may be*], is a material witness in this cause for your petitioner.

Or, E. F., now a prisoner (*&c., as above*), has made an affidavit—*Or*, been examined *ex parte* before an examiner—in this cause, on behalf of your petitioner; and notice to produce the said E. F. for cross-examination before the Court at the hearing of this cause has been given to your petitioner.

3. Your petitioner has caused the said E. F. to be served with a *subpœna* and notice to attend this honourable Court at the hearing of this cause, and be examined [*Or*, cross-examined] as aforesaid; but by reason of the said E. F. being a prisoner he is unable to obey the same.

Your petitioner therefore humbly prays, that a writ of *habeas corpus* may issue, directed to the keeper of the said prison, to bring the said E. F. before the Court, on the hearing of this cause, to be examined as a witness [*Or*, to be cross-examined] as aforesaid.

And your petitioner will ever pray, &c.

768.

Affidavit in support of motion or petition (*z*).

Formal parts: see ante, No. 9.

1. 2. *Show state of the cause, and the grounds for requiring the attendance of the prisoner.*

3. The said E. F. is now a prisoner in the City of London prison at Holloway [*or as may be*].

4. 5. On the (*Prove service of subpœna, and notice to attend the Court: see post*, No. 811, *pars.* 1—3).

6. *Show means of knowledge.*

769.

Præcipe for the writ (*a*).

The same as No. 390, *ante;* but describe the writ as a *habeas corpus ad test.* (*If so:* and *duces tecum*).

(*z*) See Dan. Pr. 780, 805.

(*a*) *Ibid.;* Braithwaite's Pr. 223, 224; and notes to No. 390, *ante.*

770. The writ (*b*).

Victoria, (*&c.: see ante*, No. 313).

To the keeper of the City of London prison at Holloway [*or other custodian of the witness: see ante*, No. 308], greeting:

We command you, that you have the body of E. F., detained in our prison under your custody, as it is said, under safe and secure conduct, before our Lord High Chancellor [*Or*, before his lordship the Master of the Rolls—*or as may be*], at (*State where; as thus:* his Court in Lincoln's Inn, London—*Or*, in Rolls' Yard, Chancery Lane, London), on ——, the —— day of ——, now instant [*Or*, next], by —— of the clock in the——noon of the same day, then and there to testify the truth, according to his knowledge, in a certain cause depending in our High Court of Chancery, wherein C. D. is plaintiff, and A. B. is defendant [*or as may be: see ante*, No. 763], on the part of the plaintiff [*or as may be*]; and immediately after the said E. F. shall then and there have given his testimony before the said Lord High Chancellor [*or as may be*], that you return him, the said E. F., to our said prison under safe and secure conduct; and have there then this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

771. Indorsement thereon (*b*).

The same as No. 392, *ante*.

Section V.—Oaths, Affirmations, and Declarations of witnesses examined vivâ voce (*c*).

1. *Before the Court* (*d*).

772. Usual form of oath, where a witness is to be interrogated by the Court (*e*).

To the witness.—You swear that you will true answer make to all such questions as shall be put to you by the Court—So help you God (*f*).

(*b*) See Dan. Pr. 780, 805. Braithwaite's Pr. 223, 224. The writ must be stamped with a 20*s.* Chancery fee fund stamp: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.; and the *præcipe* and order, if any, must be produced to the officer at the time the writ is presented for sealing: Braithwaite's Pr. 224.

(*c*) As to the competency of witnesses, see Dan. Pr. 781; Taylor, ss. 1210—1257; Roscoe, 165—171; Best, ss. 187—271; Powell, 25, *et seq.*

(*d*) On examinations *vivâ voce* before the Court, the witnesses are sworn or affirmed by the Registrar: who asks the person, about to be sworn or to affirm, his name, before he is sworn or affirms: Oaths in use in Court of Chancery, 3. For forms of oath and affirmation in use on trials by jury before the Court, or before the Court itself without a jury, under the 21 & 22 Vic. c. 27, see *post*, Nos. 1078—1083.

(*e*) See Oaths in use in Court of Chancery, 3.

(*f*) If the witness is a Jew, the oath concludes with the words, "So help you Jehovah:" see Oaths in use in Court of Chancery, 5; and see *ante*, No. 12, n. (*u*).

773.

Ordinary form of oath, of witness examined *vivâ voce* (*g*).

To the witness.—The evidence you shall give to the Court, touching the matters in question, shall be the truth, the whole truth, and nothing but the truth—So help you God (*h*).

774.

Oath of a Presbyterian, under 1 & 2 Vic. c. 105 (*i*).

To be uttered by the witness (*k*): I, A. B., swear by Almighty God, and as I shall answer to God at the great day of judgment, that the evidence I shall give to the Court touching the matters in question,

Or, the answers I shall make to all such questions as shall be put to me by the Court,

shall be the truth, the whole truth, and nothing but the truth.

775.

Affirmation by a Quaker or Moravian (*l*).

To be uttered by the witness (*m*): I, A. B., being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians —*as the case may be*], do solemnly, sincerely, and truly declare and affirm, that the evidence I shall give to the Court touching the matters in question,

Or, the answers I shall make to all such questions as shall be put to me by the Court,

shall be the truth, the whole truth, and nothing but the truth.

776.

Affirmation by an ex-Quaker, or ex-Moravian, under 1 & 2 Vic. c. 77 (*n*).

To be uttered by the witness (*m*): I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm, that the evidence I shall give to the Court touching the matters in question,

Or, the answers I shall make to all such questions as shall be put to me by the Court,

shall be the truth, the whole truth, and nothing but the truth.

(*g*) See Oaths in use in Court of Chancery, 3.

(*h*) If the witness is a Jew, see *ante*, No. 772, n. (*f*).

(*i*) Oaths in use in Court of Chancery, 5; and see *ante*, No. 23, n. (*u*). For other forms, see *post*, Nos. 783, 1079.

(*k*) The witness holds up his right hand, whilst he repeats the words of the oath after the Registrar.

(*l*) See Oaths in use in Court of Chancery, 5; and *ante*, No. 27, n. (*e*).

(*m*) The witness repeats the words of the affirmation after the Registrar.

(*n*) See *ante*, No. 30, n. (*h*).

777. Affirmation by a Separatist, under 3 & 4 Will. IV. c. 82 (*o*).

To be uttered by the witness (*p*): I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare, that the evidence I shall give to the Court touching the matters in question,

Or, the answers I shall make to all such questions as shall be put to me by the Court,

shall be the truth, the whole truth, and nothing but the truth.

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778. Affirmation under the Common Law Procedure Act, 1854 (*q*).

To be uttered by the witness (*p*): I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that the evidence I shall give to the Court touching the matters in question,

Or, the answers I shall make to all such questions as shall be put to me by the Court,

shall be the truth, the whole truth, and nothing but the truth.

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779. Promise and declaration, under the Evidence Further Amendment Act, 1869 (*r*).

I solemnly promise and declare, that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth.

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780. Oath of an interpreter of evidence (*s*).

You shall well and truly interpret the oath that shall be administered, and the questions that shall be put, to the witness, as also the evidence he shall give to the Court touching the matters in question, to the best of your skill and knowledge—So help you God.

(*o*) See *ante*, No. 32, n. (*k*).

(*p*) The witness repeats the words of the oath or affirmation after the Registrar.

(*q*) 17 & 18 Vic. c. 125, s. 20; Oaths in use in Court of Chancery, 5; and see *ante*, No. 34, n. (*m*); and *post*, Nos. 787, 1081.

(*r*) 32 & 33 Vic. 68, s. 4; amended by the Evidence Amendment Act, 1870 (33 & 34 Vic. c. 49). The presiding judge (including, "any person or persons having by law authority to administer an oath for the taking of evidence") is to be satisfied that the taking of an oath would have no binding effect on the conscience of the person called to give evidence: see *ib.*

(*s*) Oaths in use in Court of Chancery, 6. A foreigner taking an oath is to be sworn according to the form prescribed by his own faith, and in the manner practised in his own country; and the oath is to be administered according to the form acknowledged by the witness as most binding on his conscience: *ib.*

781.
Oath of a Chinese (*t*).

You shall tell the truth, and the whole truth: for the saucer is cracked; and if you do not tell the whole truth, your body is cracked like this saucer.

782.
Ordinary form of oath (*u*).

2. *Before an Examiner, or Commissioner to examine witnesses.*

You swear that you shall true answer make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth—So help you God (*v*).

783.
Oath of a Presbyterian, under 1 & 2 Vic. c. 105 (*x*).

To be uttered by the witness (*y*): I, A. B., do solemnly and sincerely declare, that (*State in what form, and with what ceremony, an oath will be binding; as:*

holding up my right hand, and declaring to the truth, as I shall answer to God at the great day of judgment),

is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth (*Repeat the binding form; as:*

as I shall answer to God at the great day of judgment).

784.
Affirmation by a Quaker, or Moravian (*z*).

To be uttered by the witness (*y*): I, A. B., being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], do solemnly, sincerely, and truly declare and affirm, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

(*t*) Oaths in use in Court of Chancery, 6. The interpreter places a china saucer in the witness's hand, who throws it down and breaks it; and then the interpreter exclaims in the words of No. 781: *ib.*

(*u*) See Braithwaite's Pr. 405; Braithwaite's Oaths in Chan. 86; and see Dan. Pr. 864, ed. 2.

(*v*) If the witness is a Jew, see *ante*, No. 772, n. (*f*).

(*x*) See *ante*, No. 23, n. (*u*). For other forms, see Nos. 774, 1079.

(*y*) The witness repeats the words of the oath or affirmation after the Registrar.

(*z*) See *ante*, No. 27, n. (*e*). For other forms, see Nos. 775, 1080.

785.
Affirmation by an ex-Quaker, or ex-Moravian, under 1 & 2 Vic. c. 77 (*w*).

To be uttered by the witness (*x*): I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

786.
Affirmation by a Separatist, under 3 & 4 Will. IV. c. 82 (*y*).

To be uttered by the witness (*x*): I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

787.
Affirmation under the Common Law Procedure Act, 1854 (*z*).

To be uttered by the witness (*x*): I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

788.
Promise and declaration, under the Evidence Further Amendment Act, 1869 (*a*).

The same as No. 779, *ante*.

(*w*) See *ante*, No. 30, n. (*h*); and No. 776.

(*x*) The witness repeats the words of the affirmation after the Registrar.

(*y*) See *ante*, No. 32, n. (*k*); and No. 777.

(*z*) 17 & 18 Vic. c. 125, s. 20; and see *ante*, No. 34, n. (*m*); and Nos. 778, 1081.

(*a*) 32 & 33 Vic. c. 68, s. 4; and see *ante*, No. 779, n. (*r*).

Section VI.—Manner of, and Time for, taking Evidence (*b*).

789.
Notice of intention to read affidavits or depositions, filed or made, before issue joined (*c*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to read, at the hearing of this cause, the following affidavits, and depositions, filed or made before issue was joined therein; that is to say:

The affidavit of C. D., filed ——, 187—.

The joint affidavit of E. F. and G. H., filed ——, 187—.

And the depositions of L. M. and N. O., filed ——, 187—.

[*or as may be*].

790.
Summons for further time to give the notice (*d*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant A. B.], that the time within which the applicant is at liberty to give notice to the defendant A. B., *&c.*, of his intention to read, at the hearing of this cause, all or any of the affidavits or depositions filed or made before issue was joined therein, may be enlarged to the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

790a.
Summons for leave to use affidavits filed before issue joined, though no notice given (*e*).

Formal parts: see ante, No. 60.

on the part of the defendants, that notwithstanding the time fixed for giving notice of the defendants' intention to read the affidavits of the defendants, and of T. E., filed in this cause on, *&c.*, before issue was joined therein, has expired, the applicants may be at liberty to read the said affidavits on the hearing of this cause: without prejudice to the right of the plaintiff to cross-examine the said deponents, on their said affidavits, in Court, on the hearing of this cause; and that the costs of this application may be costs in the cause.

(*b*) See Dan. Pr. 782—785.

(*c*) *Ibid.*, 783; Ord. XIX. 12. As to advertising the notice as service, see Dan. Pr. 783.

(*d*) See Dan. Pr. 783; Ord. XXXVII. 17. For order in like case (on appeal motion), see *Southampton Steam Boat Company* v. *Rawlins*, L.JJ., 11 Mar. 1865, Reg. Lib. B. 658: 11 Jur. N. S. 230: 13 W. R. 512.

(*e*) *Bathyany* v. *Padwick*, V. C. S. at Chambers, 7 Jan. 1869, Reg. Lib. A. 10.

791.
Summons to enlarge time for taking evidence (*f*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*Or*, defendant A. B.], that the time for taking evidence in chief in this cause may be enlarged until the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

792.
The like, concurrently with time in, and to use evidence taken in, another suit (*g*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that the time for closing the evidence in this cause may be enlarged to such time as the time for closing the evidence in a cause depending in this Court of H. *v.* W. (1863, H. 218), is now or shall be hereafter enlarged to; and that the evidence already and hereafter to be taken in the said cause of H. *v.* W. shall be read on the hearing, and all other proceedings, in this cause: saving all just exceptions; and that the defendant may have the same right to move to dismiss this cause for want of prosecution as he may have to dismiss the said cause of H. *v.* W.; and that the costs of this application may be costs in the cause.

793.
Notice of motion, or summons, for leave to use, at the hearing, affidavit filed after evidence closed (*h*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiffs [*Or*, defendants], that notwithstanding the time limited for closing the evidence in this cause has expired, the applicant may be at liberty to read and use, as evidence on the hearing of this cause, an affidavit of C. D., filed the —— of ——, 187—; and that the defendants [*Or*, plaintiffs] may be at liberty to cross-examine the said C. D. thereon; and that the costs of this application may be costs in the cause.

(*f*) See Dan. Pr. 785; 15 & 16 Vic. c. 80, s. 26; Ord. XXXVII. 15; Ord. 5 Feb. 1861, r. 5. For orders in like case, see *Teed* v. *Purnell*, V. C. S. at Chambers, 11 Jan. 1869, Reg. Lib. B. 8; *Stamp* v. *Anderson*, V. C. J. at Chambers, 11 Jan. 1869, Reg. Lib. B. 9; *Whitham* v. *Humber Iron Works*, M. R. at Chambers, 30 Jan. 1869, Reg. Lib. B. 17; *Gray* v. *Gray*, V. C. M. at Chambers, 28 July, 1870, Reg. Lib. A. 2127. Where the time is enlarged after the cause has been set down for hearing, the order should be produced to the Order of Course Clerk in the Registrars' office: who will make a note thereof in the cause book kept there: Reg. Regul. 21 Jan. 1861; Dan. Pr. 784, n. (*z*), 828. As to setting the cause down, pending the taking of the evidence, see Dan. Pr. 828; and for order so to do, see *Jones* v. *Owen*, M. R. at Chambers, 27 Nov. 1866, Reg. Lib. A. 2428.

(*g*) *Howe* v. *Grey*, V. C. S. at Chambers, 16 Mar. 1865, Reg. Lib. A. 530; and see *ante*, No. 737.

(*h*) See Dan. Pr. 785. For order in like case, see *Saunders* v. *Mackeson*, V. C. W. at Chambers, 15 Dec. 1865, Reg. Lib. B. 2438; *Swinnerton* v. *Pretyman*, M. R. at Chambers, 5 Nov. 1869, Reg. Lib. B. 2602. For the principles on which affidavits filed after the closing of the evidence are received, see Dan. Pr. 784.

Section VII.—Affidavits, and ex parte Examinations before an Examiner (*i*).

794.
Notice of intention to examine a witness *ex parte*, before an examiner (*k*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to examine C. D., of (*Insert description of the witness*), *ex parte*, as a witness on behalf of the said plaintiff [*Or*, defendant A. B.], in this cause, before E. F., esquire, one of the examiners of witnesses in this Court,

Or, before G. H., the examiner specially appointed for the examination of witnesses in this cause,

at (*State where; as thus:* the office of the said examiner in Rolls' Yard, Chancery Lane, London), on ——, the —— day of ——, 187—, at —— of the clock in the ——noon.

795.
Formal parts of an *ex parte* examination before an examiner (*l*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Deposition of a witness taken *ex parte* in the above cause (*m*).

Sworn the —— day of ——, 187—. } A. B., of (*residence and addition*), called on behalf of the plaintiff [*or as may*

(*i*) See Dan. Pr. 786—799. As to affidavits and affirmations, the forms thereof, oaths, jurats, declarations, and affirmats thereto, and the persons before whom they may be sworn or affirmed, see *ante*, No. 9, *et seq.*, and notes thereto; and see *Index*, Affidavit. As to obtaining copies of affidavits, see Dan. Pr. 794—796; and see *post*, Chap. XXXI.

(*k*) See Dan. Pr. 797; Ord. 5 Feb. 1861, rr. 4, 6, 22. As to the appointment of a special examiner, and the mode of enforcing the attendance of a witness before an examiner, see *post*, Nos. 799—802, 805—822.

(*l*) See Dan. Pr. 797, 801, 806; Ord. 5 Feb. 1861, r. 6. Depositions should be written on foolscap paper, bookwise or briefwise, as the examiner thinks fit: Ord. 6 Mar. 1860, r. 16; Dan. Pr. 807; and all interlineations or alterations should be authenticated by the initials of the examiner; Dan. Pr. 806, n. (*d*). A fee of £3 must be deposited with the examiner's clerk, on obtaining an appointment to examine a witness before an examiner of the Court: Ord. 1 Jan. 1862; except where the party sues *in formâ pauperis:* Dan. Pr. 802, n. (*h*). A special examiner sometimes hands the depositions (under cover) to the solicitor of the party obtaining the appointment: by whom they are taken or sent to the Record and Writ Clerks' office. If the depositions are forwarded direct to that office, they should be sent in a sealed cover, directed to "The Record and Writ Clerks of the Court of Chancery, Record and Writ Clerks' Office, Chancery Lane, London, W.C:" see Dan. Pr. 806, n. (*d*).

(*m*) When an examination is taken before an examiner of the Court away

be], to be examined *ex parte*, saith as follows :

I have had, *&c.*

A. B.

I certify that the evidence contained in this and the —— preceding sheets of paper was taken before me *ex parte*, and was read over to the deponent : who signed the same in my presence.

C. D., examiner [*Or*, special examiner appointed by order in this cause, dated the —— of ——, 187—].

796.

Certificate, verifying copies of affidavits to be printed (*n*).

A. *v.* B.

I hereby certify that this copy is a correct copy of the affidavit of C. D., filed in this cause on the —— day of —— 187—.

E. F., solicitor for the plaintiff [*Or*, defendant G. H.—*or as may be*].

797.

Request that evidence may be printed, where notice of motion for a decree has been served(*o*).

In Chancery.

(*Name of Judge.*) (*Reference to the record.*)

(*Short title ; as :* Jones *v.* Smith.)

The evidence in this cause hereunder mentioned and set forth having been filed, I do hereby, on behalf of the plaintiff [*Or*,

from his office, or before a special examiner anywhere, state where the examination took place ; as thus : "at the Red Lion Inn, Wells, in the county of Somerset ;" and see *post*, No. 824.

(*n*) R. & W. Clerks' Suggestions, Form No. 2 ; and see Dan. Pr. 797. As to printing affidavits and depositions to be used at the hearing of any cause, or motion for a decree, see Ord. 16 May, 1862 ; Dan. Pr. 797—799. The documents are printed under the direction and superintendence of the Clerks of Records and Writs, upon paper of the same kind and dimensions, and with the same type, prescribed for the printing of bills, and in all other respects in such form and manner as they deem most convenient : Ord. 16 May, 1862, r. 2 ; Dan. Pr. 797. As to such paper and type, see *ante*, No. 195. Solicitors and parties, on filing affidavits required to be printed, must leave with the Clerks of Records and Writs a fair copy of each affidavit filed, written on draft paper, on one side only, and certified by the solicitor or party to be a correct copy : Ord. 16 May, 1862, r. 3 ; Dan. Pr. 797. The copy should have the usual margin, on the left-hand side of each page ; and the certificate should be written on the left-hand margin of the first page of each copy, before being left at the office : R. & W. Clerks' Suggestions, Nos. 7, 8 ; Dan. Pr. 797, n. (*u*).

(*o*) As to the times at which the evidence will be directed to be printed, see Ord. 16 May, 1862, rr. 4, 5 ; R. & W. Clerks' Suggestions, Nos. 2—4 ; Dan.

defendant A. B.—*as the case may be*], request that the same be printed. Dated this —— day of —— 187—.

(*Name, &c., of solicitor or party making the request: see ante*, No. 4, *or* 7.)

Schedule of the evidence above referred to.

On the part of the plaintiff [*Or*, defendant A. B.—*as the case may be*] in chief [*Or*, in answer—*Or*, in reply—*as the case may be*].

No. (*p*).	Name of witness.	Nature of document (*q*).	When filed.

Memorandum to be written in the margin of the request (*r*).

Twenty [*or as may be*] printed copies of this evidence will probably be required for general use in this cause.

C. D.,
Solicitor [*Or*, Agent] for the plaintiff [*or as may be*].

Pr. 797, 798. Printed forms of Nos. 797 and 798 may be obtained on application at the divisional seat in the Record and Writ Clerks' office: R. & W. Clerks' Suggestions, No. 9. As to what printed copies must or may be taken, see Ord. 16 May, 1862, rr. 6, 7; R. & W. Clerks' Suggestions, No. 6; Dan. Pr. 798, 799. As to motions for decree, see *ante*, Nos. 691—714, and notes thereto.

(*p*) The fair copies of the affidavits are to be numbered consecutively (on the top of the first page), in the order in which they are intended to be used; and the numbers inserted in this column are to correspond with the numbers on the fair copies.

(*q*) Insert in this column the word "Affidavit," or "Deposition": as the case may be.

(*r*) See R. & W. Clerks' Suggestions, No. 5; Dan. Pr. 798.

798.
Request that evidence may be printed, where replication has been filed (*s*).

In Chancery.
(*Name of Judge.*) (*Reference to the record.*)
(*Short title; as:* Jones *v.* Smith.)

The time for closing the evidence in this cause having expired, I do hereby, on behalf of the plaintiff [*Or*, defendant A. B.—*as the case may be*], request that the evidence hereunder mentioned and set forth be printed. Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party making the request: see ante*, No. 4, *or* 7.)

Schedule of the evidence above referred to.

On the part of the plaintiff [*Or*, defendant—*or as may be*].

No. (*t*).	Name of witness.	Nature of document (*u*).	When filed.

Memorandum to be written in the margin of the request.

[The same as the memorandum at foot of No. 797, *ante*.]

SECTION VIII.—VIVÂ VOCE EVIDENCE (*x*).

799.
Notice of motion, or summons, for the appointment of a special examiner (*y*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*Or*, defendant A. B.], that B. A., of (*address*), barrister at law,

Or, one of the solicitors of this Court—*or as may be*,

may be appointed examiner, for the purpose of taking (*State what; as thus:*

the examination of witnesses in this cause (*z*).

Or, the cross-examination of C. D. on his affidavit filed in this cause on the ——, 187— (*a*).

Or, the *ex parte* examination of E. F. in this cause).

(*s*) See notes to No. 797, *ante*. As to replication, see *ante*, Nos. 715—730 and notes thereto.

(*t*) See *ante*, No. 797, n. (*p*).

(*u*) *Ibid.*, n. (*q*).

(*x*) See Dan. Pr. 799—814.

(*y*) *Ibid.*, 801, 812. As to when a special examiner will be appointed, see Dan. Pr. 800, 801; and as to his fees, see *ib.* 801, n. (*y*).

(*z*) *Nixey* v. *Roffey*, V. C. M. at Chambers, 18 Jan. 1869, Reg. Lib. B. 38.

(*a*) *Tunstall* v. *Bartlett*, V. C. W. at Chambers, 20 Dec. 1865, Reg. Lib. B. 2448.

800.

Notice of motion, or summons, for the appointment of a special examiner of witnesses abroad (*b*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*Or*, defendant A. B.]:

1. That in case the defendant J. B. shall be resident at or near M., in the colony of V., or in case the examination of the said defendant can be conveniently taken at M. aforesaid, or in the said colony, J. G. F., of M. aforesaid, esquire, barrister at law, may be appointed an examiner for the examination of the defendant J. B. in this cause, on behalf of the plaintiff.

2. That in case the said J. G. F. shall die or cease to reside within the said colony of V., before the taking or completion of the evidence of the defendant J. B., or shall decline or be unable to take the same, G. M. S., of M. aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

3. That in case the defendant J. B. shall be resident at or near A., in the colony of S., or in case the examination of the said defendant can be conveniently taken at A. aforesaid, or within the said colony of S., J. M. S., of A. aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

4. That in case the said J. M. S. shall die, or cease to reside within the said colony of S., before the taking or completion of the evidence of the said defendant, or shall decline or be unable to take the same, W. J. W., of A. aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

5. That in case the evidence of the said defendant is taken at M. aforesaid, notice thereof is to be given to J. T., and G. H., both of M. aforesaid, or to one of them, as the agent there of the defendants S. M. the elder, and S. M. the younger.

6. And that in case the evidence of the said defendant is taken at A. aforesaid, notice thereof is to be given to W. S., and E. G., both of A. aforesaid, or to one of them, as the agent there of the said defendants S. M. the elder, and S. M. the younger.

801.

The like (*c*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that G. W. A., and T. K. B., both of S., in the colony of N. S. W., solicitors, may be appointed

(*b*) See Dan. Pr. 812. This form follows the order in *Crofts* v. *Middleton*, V. C. T. 31 Jan. 1853, Reg. Lib. A. 405: 9 Hare, App. 75. As to the mode of compelling the attendance of a witness before a special examiner and commissioner abroad, see Dan. Pr. 812; 6 & 7 Vic. c. 82, s. 5; 15 & 16 Vic. c. 86, s. 35; 22 Vic. c. 20, s. 1; Taylor on Evid. ss. 1183, 1183a, 1183b. For the practice at law, see Chitty's Arch. 342—344. As to commissions for the examination of witnesses abroad, see Dan. Pr. 782, 812; 15 & 16 Vic. c. 86, s. 28; for the practice relative to the execution of such commissions, see Dan. Pr. 872—908, ed. 2; 848, 849, ed. 4; and for the forms incident thereto, see the first edition of the present work, Nos. 814—823.

(*c*) See *Cooper* v. *Macdonald*, M. R. at Chambers, 13 April, 1865, Reg. Lib.

examiners for the purpose of taking the examination of witnesses in this cause (as to the claims of Sir D. C., and T. F. J.); and that the said G. W. A. shall alone act as such examiner: unless he shall refuse to act, or is by illness or other sufficient cause incapacitated from acting: in which case, the said T. K. B. shall alone act as such examiner.

802.

Affidavit in support of application to appoint a special examiner (*d*).

Formal parts: see ante, No. 9.

1. *Show the necessity for the appointment of a special examiner.*

2. *Prove fitness of person proposed; as thus:* A. B., of, *&c.*, the person proposed to be appointed special examiner as aforesaid, has no interest in the matters in question in this cause; and in my judgment he is a fit and proper person to be appointed such special examiner.

3. *Show means of knowledge.*

803.

Summons, for time to give notice for production of deponents and witnesses for cross-examination, under Ord. 5 Feb. 1861, r. 19 (*e*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant A. B.], that the time limited by the General Order of 5th Feb., 1861, for the applicant to give notice, requiring the production for cross-examination before the examiner,

Or, before the Court, at the hearing of this cause,

of any deponent or witness who has made an affidavit or affidavits, or been examined *ex parte*, on behalf of the defendants [*Or*, plaintiff—*or as may be*], may be enlarged to the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

A. 848; *Dunn* v. *Turquand*, V. C. S. at Chambers, 25 Mar. 1865, Reg. Lib. A. 576.

(*d*) See Dan. Pr. 801.

(*e*) *Ibid.*, 801, 811; Ord. 5 Feb. 1861, r. 19; Ord. XXXVII. 17. For orders in like case, see *Southampton Steam Boat Company* v. *Rawlins*, L.JJ., 11 Mar. 1865, Reg. Lib. B. 658: 11 Jur. N. S. 230: 13 W. R. 512; *Lea* v. *Anderton*, V. C. J. at Chambers, 31 Dec. 1869, Reg. Lib. B. 3104. For order for leave to serve the notice, notwithstanding the time has expired, see *Davis* v. *Davis*, M. R. at Chambers, 22 Feb. 1864, Reg. Lib. A. 302; and for order for production of deponents for cross-examination at the hearing, notwithstanding notice to do so was given out of time, see *Saunders* v. *Mackeson*, V. C. W. at Chambers, 15 Dec. 1865, Reg. Lib. B. 2438. As to the time allowed to serve the notice, see Dan. Pr. 801, 810, 811; Ord. 5 Feb. 1861, r. 19.

804.

Notice of intention to cross-examine witnesses before an examiner, and for their production (*f*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*Or*, defendant] intends to cross-examine the several deponents named and described in the schedule hereto upon their affidavits filed in this cause on behalf of the defendant [*Or*, plaintiff] on the respective dates in the said schedule mentioned; and that we [*Or*, I] have obtained an appointment for such cross-examination before C. D., esquire, one of the examiners of this honourable Court,

Or, before C. D., esquire, the examiner specially appointed for this purpose, by an order in this cause,

for ——, the —— day of ——, 187—, at —— of the clock in the ——noon, at (*State where; as:* the office of the said C. D., in Rolls' Yard, Chancery Lane, London).

And take also notice, that you are hereby required to produce the said deponents at the time and place aforesaid, for cross-examination before the said examiner accordingly.

The schedule above referred to.

Name of deponent.	Description.	When filed.
Edward Williams .	No. 300, Chancery Lane, Solicitor . . .	1871, April 7.
John Noakes . . .	Hampstead Heath, Esq. .	,, May 11.

805.

Præcipe for a *subpœna*, for the attendance of a witness before an examiner (*g*).

The same as No. 762, *ante*.

806.

The *subpœna* (*h*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert names of the witness or witnesses*), greeting:

We command you (*If more than one, add:* and every of you), that, laying all other matters aside, and notwithstanding any

(*f*) See Dan. Pr. 801, 810, 811; Ord. 5 Feb. 1861, rr. 19, 22. As to the mode of taking evidence on a notice of motion for a decree, see *ante*, Nos. 693, *et seq.*

(*g*) See Dan. Pr. 802; Braithwaite's Pr. 253; and *ante*, No. 762, n. (*p*).

(*h*) See Dan. Pr. 802; and *ante*, No. 763, n. (*q*). The form here given is

excuse, you personally be and appear before C. D., esquire (*i*), one of the examiners of witnesses in our High Court of Chancery, at his office in Rolls' Yard, Chancery Lane, London, at such times as the bearer hereof shall by notice in writing appoint,

Or, before B. A., the examiner specially appointed for the examination of witnesses in our Chancery, at such times and places as the bearer hereof shall by notice in writing appoint,

to testify the truth according to your knowledge (*Continue as in* No. 763, *ante, to the end*).

807. Indorsement thereon (*k*).

The same as *ante*, No. 4, *or* 7.

808. Notice to be served on a witness required to attend before an examiner of the Court (*l*).

Formal parts : see ante, No. 54.

Take notice, that you are required to attend before C. D., esquire, one of the examiners of witnesses of this Court, at his office in Rolls' Yard, Chancery Lane, London [*or as may be*], on —— the —— day of ——, 187—, at —— of the clock in the ——noon, to give evidence on the part and behalf of the above named plaintiff [*Or*, defendant A. B.—*or as may be*].

809. The like, before a special examiner (*m*).

Formal parts : see ante, No. 54.

Take notice, that you are required to attend before C. D., the examiner specially appointed for the examination of witnesses in this cause, at (*State where ; as thus :* the Red Lion Inn, Wells, in the county of Somerset), on —— the—— day of ——, 187—, at —— of the clock in the ——noon, to give evidence on the part and behalf of the above named plaintiff [*Or*, defendant A. B. —*or as may be*].

prescribed by Ord. XXVIII. 2, and Sched. E. No. 3, subject to such alterations and variations as circumstances may require : *ib.* As to the number of names which may be included in one *subpœna*, see Ord. XXVIII. 3, 4; and *ante*, No. 763, n. (*q*).

(*i*) The present examiners are Charles Otter, and Charles Beavan, Esqs.

(*k*) See Dan. Pr. 802.

(*l*) *Ibid.*, 802, 803. As to the deposit to be made on obtaining the appointment, see *ante*, No. 795, n. (*l*).

(*m*) See Dan. Pr. 802, 803.

810.

Motion paper, for order *nisi*, for attendance or committal of a witness refusing to obey *subpœna* (*n*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that E. F.: who has been served with a *subpœna* to attend and be examined as a witness for the plaintiff [*Or*, said defendant] before C. D., esquire, an examiner of this Court,

Or, before C. D., the special examiner appointed in this cause,

but has refused to attend: may be ordered to attend and be sworn and examined, as such witness, at such time and place as the examiner shall appoint; or, in default thereof, stand committed to the City of London prison at Holloway.

An affidavit in support, and the examiner's certificate of default (*o*), accompany.

811.

Affidavit in support (*p*).

Formal parts: see ante, No. 9.

1. On the —— of ——, 187—, I served E. F., the person named in the *subpœna* next hereinafter mentioned, with a *subpœna* issuing out of, and under the seal of this honourable Court, by delivering to, and leaving with the said E. F., personally, at (*State where*), in the (county) of ——, a true copy of the said *subpœna*, and of the indorsement thereon; and I at the same time showed to the said E. F. the said *subpœna* so under seal as aforesaid.

2. By the said *subpœna* the said E. F. was commanded personally to be and appear before (*Recite subpœna, to* knowledge), in this cause, on the part of (*State whom, as in subpœna*).

If a subpœna duces tecum, continue thus: and the said E. F. was thereby also commanded to bring with him and produce certain documents therein specified.

3. At the time of the aforesaid service of the said *subpœna*, I delivered to and left with the said E. F. a notice in writing intituled in this cause, and addressed to the said E. F., and purporting that the said E. F. was required to attend (*Recite the body of the notice*).

4. The said E. F. is a material witness for the plaintiff [*Or*, defendant A. B.] in this cause.

(*n*) See Dan. Pr., 804. For order in like case, see Seton, 1233, No. 1.

(*o*) The examiner's certificate should be filed at the Record and Writ Clerks' office: Dan. Pr. 803. The certificate usually runs thus: (*Title of cause*) "I certify that no person of the name and description of E. F., of, *&c.*, attended to be examined before me this day, on the part of the plaintiff [*or as may be*]. As witness my hand this —— day of ——, 187—: C. D., examiner." Or thus: (*Title of cause*) "I certify that an appointment was made with me for the —— day of ——, instant, for the cross-examination of witnesses in the above cause; and that E. F. did not attend to be cross-examined pursuant to such appointment. Dated, &c.": *Wintour* v. *Clifton* (1854, W. No. 43); Certificate filed 3 Dec. 1868.

(*p*) See Dan. Pr. 803.

812.
Motion paper, for order absolute (*q*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that the annexed order *nisi*, dated the ——, 187—, for the committal of E. F., for non-attendance as a witness, may be made absolute.

An affidavit in support, and the examiner's certificate of default, accompany.

813.
Affidavit in support (*r*).

Formal parts: see ante, No. 9.

1. *Prove service of the order nisi: see ante*, No. 48.

2. At the time of the service aforesaid of the said order, I delivered (*Prove service of notice of further appointment: see ante*, No. 811, *par.* 3).

814.
Notice of motion, to compel attendance of witness refusing to obey a *subpœna* (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that E. F., of (*residence and addition*): who has been served with a *subpœna* to attend and be examined as a witness for the plaintiff [*Or*, said defendant], before C. D., esquire, an examiner of this Court,

Or, before C. D., the examiner specially appointed for the examination of witnesses in this cause,

but has neglected or refused to attend and be examined: may be ordered to attend and be sworn and examined as such witness, at such time and place as the said examiner shall appoint; and that the said E. F. may be ordered to pay the costs of this application.

815.
Attachment thereon (*t*).

Præcipe and *Indorsement:* The same as Nos. 312, and 314, *ante;* but describe the contempt as in the order.

The writ: The same as No. 313, *ante.*

(*q*) See Dan. Pr. 804. For order in like case, see Seton, 1234, No. 2.

(*r*) See Dan. Pr. 804.

(*s*) *Ibid.*, 804. For order in like case, see *Peake* v. *Braham*, M. R., 1 Aug. 1867, Reg. Lib. B. 1909. For form of affidavit of service of the notice of motion, see *ante*, No. 47; of the *subpœna* and notice to attend, *ante*, No. 811; and of the order to attend, and notice of a further appointment, *ante*, No. 813.

(*t*) See Dan. Pr. 804; and notes to Nos. 312—314, *ante.*

816.

Notice of motion, that a witness refusing to produce documents on a *subpœna* may be ordered to produce same (*u*).

Formal parts : see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that E. F., of (*residence and addition*), in obedience to the *subpœna* served upon him in this cause, may be ordered to attend C. D., esquire, one of the examiners of this Court,

Or, C. D., the examiner specially appointed for the examination of witnesses in this cause,

at his own expense, at such time and place as the said examiner shall appoint, and then and there produce the several documents in the said *subpœna* specified [*or as may be*] ; and that the said E. F. may be ordered to pay the costs occasioned by his refusal to produce the said documents, and of this application.

817.

Motion paper, for a *habeas*, for attendance of a witness before an examiner (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that a *habeas* may issue, directed to the keeper of the City of London prison at Holloway [*or as may be*], to bring E. F. before C. D., esquire, one of the examiners of this Court,

Or, before C. D., the special examiner appointed in this cause,

at (*State where*), on (*State when*), and on such other days as the said examiner shall appoint : to be examined as a witness for the plaintiff [*Or*, said defendant].

An affidavit in support, and the keeper's certificate of custody accompany.

818.

Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

1. *Show state of the cause; as thus:* Replication in this cause was filed on the —— day of ——, 187— ; and this cause is now at issue.

2. *Show grounds for requiring the attendance of the prisoner; as thus:* E. F., now a prisoner in the City of London prison at Holloway, [*or as may be*], is a material witness in this cause for your petitioner; and by reason of the refusal of the said E. F. to make an affidavit on your petitioner's behalf, your petitioner is advised to examine the said E. F., *ex parte*, before an examiner of this Court [*or as may be*].

3. Your petitioner has caused the said E. F. to be served with a *subpœna* and notice to attend C. D., esquire, one of the examiners of this Court [*or as may be*], and be examined as a witness

(*u*) See Dan. Pr. 824. The application must be supported by the examiner's certificate of default.

(*x*) See Dan. Pr. 805. For order in like case, see Seton, 1275, No. 3.

on your petitioner's behalf; but by reason of the said E. F. being a prisoner he is unable to obey the same.

Your petitioner therefore humbly prays, that a writ of *habeas corpus* may issue, directed to the keeper of the said prison, to bring the said E. F. before (*Continue as in* No. 817, *ante, to* witness, *and add*) for your petitioner.

And your petitioner will ever pray, &c.

819.

Affidavit in support (*y*).

Formal parts: see ante, No. 9.

1. 2. *Show state of the cause; and the grounds for requiring the attendance of the prisoner: as in* No. 818, *ante.*

3. 4. On the (*Prove service of subpœna, and notice to attend the examiner: see* No. 811, *pars.* 1—3, *ante*).

5. *Show means of knowledge.*

820.

Præcipe for the writ (*z*).

The same as No. 390, *ante;* but describe the writ as a *habeas corpus ad test.* (*If so:* and *duces tecum*).

821.

The writ (*a*).

Proceed as in No. 770, *ante, to* greeting:

We command you, that you have the body of E. F., detained in our prison under your custody, as it is said, under safe and secure conduct, before C. D, esquire, one of the examiners of witnesses in our High Court of Chancery,

Or, if before a special examiner, insert his name, and add: the examiner specially appointed for the examination of witnesses in our High Court of Chancery,

at (*State where; as thus:* his office in Rolls' Yard, Chancery Lane, London), on —— the —— day of ——, instant [*Or*, next], by —— of the clock in the ——noon of the same day, then and there to testify the truth (*Continue as in* No. 770, *ante, to the end: substituting* "examiner," *for* "Lord High Chancellor," *&c.*).

822.

Indorsement thereon (*b*).

The same as No. 392, *ante.*

(*y*) See Dan. Pr. 805.

(*z*) *Ibid.;* Braithwaite's Pr. 223, 224.

(*a*) *Ibid.;* and *ante*, No. 770, n. (*b*).

(*b*) See Dan. Pr. 805; Braithwaite's Pr. 223, 224.

823.

Formal parts of deposition of a deponent cross-examined on his affidavit, before an examiner (*c*).

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

Deposition of a witness cross-examined in the above cause (*d*),

before me,

B. A., examiner [*Or*, special examiner appointed by order in this cause, dated the —— of ——, 187—].

Sworn the —— day of ——, 187—. E. F., cross-examined on behalf of the plaintiff [*Or*, defendant A. B.], on his affidavit filed the —— day of ——, 187—, in this cause, saith as follows :—

I was lately, *&c.*

Re-examined on behalf of the defendant A. B. [*Or*, plaintiff] :—

I think it was, *&c.*

Cross-examined on behalf of the plaintiff [*Or*, defendant A. B.], upon new matter in the re-examination :—

Having now seen, *&c.*

Re-examined on behalf of the defendant A. B. [*Or*, plaintiff] :—

My impression is, *&c.*

E. F.

I hereby certify that the evidence contained in this and the —— preceding sheets of paper was taken by me, and was afterwards read over to the witness [*Or*, respective witnesses], and signed by him [*Or*, them], in the presence of the parties attending.

B. A.

824.

The like, where the examination is at different places (*d*).

In Chancery.

(*Reference to the record.*)

Between (*Set forth the full title of the cause*).

Depositions of witnesses examined in the above cause, at the times and places hereinafter mentioned,

before me,

B. A., examiner [*Or*, special examiner appointed by order in this cause, dated the —— of ——, 187—].

(*c*) See Dan. Pr. 805—807. As to the mode in which the depositions should be written, and alterations therein authenticated, see *ante*, No. 795, n. (*l*); and as to sending depositions under cover to the Record and Writ Clerks, see *ib.*

(*d*) As to stating where the examination took place, see *ante*, No. 795, n. (*m*).

I. At the Red Lion Inn, Wells, in the county of Somerset.
Sworn the —— day of ——, 187—. } E. F. (*&c.: as in* No. 823, *ante*).
II. At the Crown Hotel, Bath, in the County of Somerset.
Sworn the —— day of ——, 187—. } G. H. (*&c.: as in* No. 823, *ante*).
I hereby certify (*&c.: as in* No. 823, *ante*).

825.
Consent to evidence being taken in the manner provided by 15 & 16 Vic. c. 86 (*e*).

In Chancery.
(*Title of cause, and reference to the record.*)
We, the undersigned solicitors for the plaintiff and defendants, hereby mutually agree that the oral examination in chief and cross-examination of all the witnesses in this cause, including the parties thereto [*Or*, of A. B., and C. D., witnesses in this cause], and the cross-examination of all persons [*Or*, of E. F. and G. H.] who have made (or shall make) an affidavit or affidavits, or who have been examined *ex parte* before an examiner [*or as the case may be*], shall be taken before one of the examiners of this Court [*Or*, before (B. A.) a special examiner of witnesses in this cause], in manner provided by the statute 15 & 16 Vic. c. 86.
Dated this —— day of ——, 187—.
L. M., solicitor for the plaintiff.
N. O., solicitor for the defendant P. R.
S. T., solicitor for all the other defendants.

826.
Notice of motion, or summons, that the evidence of a particular witness may be so taken (*f*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff [*Or*, defendant A. B.], that the oral examination in chief, and cross-examination, of C. D., a witness
Or, the cross-examination of C. D., on his *ex parte* examination [*Or*, affidavit], filed on the —— of ——, 187—
in this cause, on behalf of the plaintiff, [*Or*, said defendant], may be taken before E. F., esquire, one of the examiners of this Court,
Or, before G. H., of *&c.*, a special examiner,
at (*State where*), in manner provided by the statute 15 & 16 Vic. c. 86.
If the examiner of the Court is to attend out of London, add: and that the said E. F. may be directed to attend for the purpose of such examination [*Or*, cross-examination] at (*State where*) (*g*).

(*e*) See Dan. Pr. 799; 15 & 16 Vic. c. 86, s. 31; Ord. 5 Feb. 1861, r. 10. The consent must be filed at the Record and Writ Clerks' office: *ib.*

(*f*) See Dan. Pr. 799, 800, 805, 806; Ord. 5 Feb. 1861, r. 11. An examiner of the Court is entitled, on production to him of the order, to £1 1*s.* a day for his expenses, and 1*s.* 6*d.* per mile for travelling expenses: Ord. 5 Feb. 1861, r. 13, and Sched. thereto; Dan. Pr. 806, n. (*c*).

(*g*) For order for one of the examiners of the Court to attend a witness at

827.

Summons for leave to consent, on behalf of a person under disability, to the evidence being taken under 15 & 16 Vic. c. 86, or in some other special manner (*h*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant] A. B., an infant, by C. D., his next friend [*Or*, guardian]:

Or, the wife of the plaintiff [*Or*, defendant] E. F., by C. D., her next friend [*Or*, guardian]:

Or, a person of unsound mind, so found, by C. D., his committee:

Or, a person of unsound mind not so found, by C. D., his next friend [*Or*, guardian]:

that the said C. D. may be at liberty, on behalf of the said A. B., to consent that (*State the proposed mode of taking evidence, or other procedure, in respect of which the consent is to be given; as thus:* the oral examination in chief, and cross-examination, of the witnesses in this cause shall be taken before one of the examiners of this Court, in manner provided by the statute 15 & 16 Vic. c. 86).

828.

Formal parts of depositions of witnesses examined in chief, in manner provided by 15 & 16 Vic. c. 86 (*i*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Depositions of witnesses examined in the above cause (*k*), before me,

B. A., examiner [*Or*, special examiner appointed by order in this cause, dated the —— of ——, 187—].

Sworn the —— day of ——, 187—. } C. D., of (*residence and addition*), examined on behalf of the plaintiff [*Or*, defendant A. B.], saith as follows:—

I was not, *&c.*

—— day of ——, 187—. } Examination continued:—

When I saw, *&c.*

Cross-examined on behalf of the defendant A. B. [*Or*, plaintiff]:

I am, *&c.*

his residence at Plumstead, and take his examination, see *Pritchard* v. *Imperial Gas Light and Coke Company*, M. R., 14 July, 1870, Rolls' Lib. (on petition of course).

(*h*) See Dan. Pr. 72, 83, 106, 149, 161; Ord. 5 Feb. 1861, rr. 10, 24.

(*i*) See Dan. Pr. 800. As to the manner of conducting an examination under this Act, see *ib.* 800, *et seq.*; 15 & 16 Vic. c. 86, ss. 31, 32. For the mode in use at law, see Chitty's Arch. 329—337. As to the mode in which the depositions should be written, and alterations therein authenticated, see *ante*, No. 795, n. (*l*); and as to sending depositions under cover to the Record and Writ Clerks, see *ib.*

(*k*) As to stating where the examination took place, see *ante*, Nos. 795, n. (*m*), and 824.

Re-examined on behalf of the plaintiff [*Or*, defendant A. B.]:—
I shall be, *&c.*

Cross-examined on behalf of the defendant A. B. [*Or*, plaintiff], upon new matter in the re-examination:—
Having now seen, *&c.*

Re-examined on behalf of the plaintiff [*Or*, defendant A. B.]:—
My impression still is, *&c.*

Where questions are objected to (*l*):—
Question:—Was there any agreement?

[This question was objected to on behalf of the defendant. I stated that, in my opinion, the question was proper [*or as may be*]; and I refer it to the Court.

B. A.]

Objection to answer on the ground of professional privilege:—
Question:—Did B. insist on those persons being parties to the conveyance?

[The witness objected to this question, on the ground that his knowledge as to that matter was acquired as solicitor for Mr. R.; and he declines to answer. I stated (*&c.: as above, to* B. A.)].

C. D.

Sworn the —— day of ——, 187—. } E. F., of (*&c.: as above*).

I hereby certify that the evidence (*Continue as in* No. 823, *ante, to the end*).

---

829. The same as No. 823, *ante*.

The like, of witnesses cross-examined (*m*).

830. Summons for order that evidence may be taken *vivâ voce* at the hearing (*n*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*Or*, defendant A. B.], that the evidence in chief, as to the facts and issues hereinafter mentioned, may be taken *vivâ voce* at the hearing of this cause; namely:—

1. }
2. } (*Specify the facts and issues, distinctly and concisely.*)
3. }

(*l*) See Dan. Pr. 800.

(*m*) See notes to No. 828, *ante*.

(*n*) See Dan. Pr. 807; Ord. 5 Feb. 1861, r. 3. For order in like case, see *Firth* v. *Sykes*, V. C. W. at Chambers, 17 July, 1866, Reg. Lib. A. 1960. For order that "all the evidence as to the facts and issues in question in this cause, except as may be otherwise agreed between the parties," be taken *vivâ voce* at the hearing, see *Cooke* v. *Forbes*, V. C. W., 10 Nov. 1866, Reg. Lib. A. 2437.

831.
Summons to extend time for applying for such order (*o*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*Or*, defendant A. B.], that the time within which, under the General Order of 5 February, 1861, rule 3, an application may be made for an order that the evidence in chief as to any facts or issues may be taken *vivâ voce* at the hearing of this cause, may be enlarged to the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

832.
Notice of motion, or summons, to fix a day for hearing the cause (*p*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff [*Or*, defendant A. B.], that pursuant to the General Order of 5th February, 1861, rule 8 [*Or*, 21], a day may be fixed for the hearing of this cause.

833.
Notice of intention to examine, and cross-examine, witnesses in Court, and for their production (*q*).

Formal parts: see ante, No. 54.
Take notice, that the plaintiff [*Or*, defendant A. B.], intends to examine in chief the several witnesses named and described in the first part of the schedule hereto, and to cross-examine the several deponents and witnesses named and described in the second part of the said schedule upon their respective affidavits and examinations in this cause therein specified [*or as may be*], at the hearing of this cause, before his lordship the Master of the Rolls, at his Court in Rolls' Yard, Chancery Lane, London,

Or, before his honour the Vice-Chancellor Sir John Stuart, at his Court in Lincoln's Inn, London—*or as may be*,

on —— the —— day of ——, 187— (*day fixed for the hearing*), or so soon thereafter as this cause shall come on to be heard.

And take also notice, that you are hereby required to produce for such cross-examination, at the time and place aforesaid, the several deponents and witnesses [*Or*, I. H., *&c.*], named and described in the second part of the schedule hereto.

THE SCHEDULE ABOVE REFERRED TO.

First part.

Name of witness.	Description.
John Jones . . .	Lyndhurst, Hants, Timber Merchant.
William Brown . . .	Same place, Esquire.

(*o*) See Dan. Pr. 807; Ord. 5 Feb. 1861, r. 3; Ord. XXXVII. 17.

(*p*) See Dan. Pr. 808, 811; Ord. 5 Feb. 1861, rr. 8, 21.

(*q*) See Dan. Pr. 810, 811; Ord. 5 Feb. 1861, rr. 19, 22. For form of summons for further time to give notice for cross-examination, see *ante*, No. 803.

Second part.

Name of deponent or witness.	Description.	Nature of Document.	When filed.
Isaac Hart .	Lymington, Hants, Labourer	Affidavit .	1st Jan., 1871.
Thomas Brown .	Same place, Shopkeeper .	Ex parte examination .	8th Jan., 1871.

834.

The same as Nos. 762—771, *ante*.

Process to compel attendance of witnesses and deponents in Court, at the hearing (*r*).

835.

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A.B.], that C. D., of (*residence and addition*), may be appointed to translate into English the depositions which have been taken in the (French) language, under the order in this cause dated the ——, 187—, by E. F., the special examiner thereby appointed [*or as may be*]; and be sworn to the truth of such translation; and that such translation may be annexed to, and filed with, the said depositions.

Motion paper, for appointment of translator of depositions (*s*).

836.

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:—

1. Pursuant to an order made in this cause dated the ——, 187—, witnesses have been examined *vivâ voce* before E. F, the special examiner thereby appointed [*or as may be*].

Petition of course, for the like (*s*).

(*r*) See Dan. Pr. 808, 811; Ord. 5 Feb. 1861, rr. 9, 20; and notes to Nos. 762—771, *ante*.

(*s*) See Dan. Pr. 813.

2. The depositions of the said witnesses have been taken in the (French) language.

Your petitioner therefore humbly prays, that C. D. of (*residence and addition*), may be appointed to translate the said depositions into English, and be sworn to the truth thereof; and that such translation may be annexed to, and filed with, the said depositions.

And your petitioner will ever pray, &c.

837.

Verification of a translation of the depositions into English (*t*).

To the deponent: Is that your name and handwriting?

You do swear that you well understand the French language [*or other language in which the depositions are written*]; and that the above written is a true translation into the English language of the depositions in the French [*or as may be*] language thereunto annexed—So help you God.

C. D.

C. D., of (*residence and addition*; *as:* No. 90, Cornhill, in the city of London, Notary Public), was sworn at (*State where, and when, as in* No. 12 *ante*), that the above written is a true translation into the English language of the depositions in the French [*or as may be*] language thereunto annexed, and affixed together at the top thereof under the (notarial) seal of the said C. D., with his name thereto subscribed,

before me,

E. F. (*&c.: ante*, No. 12).

838.

Interrogatories for the examination of witnesses, under the former practice (*u*).

In Chancery.

Interrogatories to be exhibited to witnesses to be produced, sworn, and examined in a certain cause now depending and at issue in the High Court of Chancery, wherein A. B. is plaintiff and C. D. and E. F. are defendants, on the part and behalf of the above named plaintiff [*Or*, defendant—*or as may be*].

1st Interrogatory:—Do you know the parties plaintiff and

(*t*) See Dan. Pr. 813; and *ante*, No. 19.

(*u*) See Dan. Pr. 782. For the above form, see Dan. Pr. 856, ed. 2; Gresley, 547. For other forms of interrogatories under the old practice, see Gresley, 548—558; and for the former practice as to the examination of witnesses on interrogatories: which the Court has power still to resort to (15 & 16 Vic. c. 86, s. 28), see Dan. Pr. 854, *et seq.*, ed. 2.

defendants in the title of these interrogatories named, or any, or either and which of them, and how long have you known them respectively, or such of them as you do know ?

(*Then followed distinct interrogatories, according to the subject matter, or the witnesses to be examined ; but each interrogatory concluded thus :*—Declare the truth of the several matters in this interrogatory inquired after, according to the best of your knowledge, remembrance and belief.)

LAST INTERROGATORY (*x*) :—Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or to the matters in question in this cause ? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance and belief, as if you had been thereto particularly interrogated, together with your reasons at large.

SECTION IX.—EXAMINATION OF WITNESSES DE BENE ESSE (*y*).

839.

Motion paper, for leave to examine a witness *de bene esse* (*z*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for leave to examine C. D., of (*residence and addition*), as a witness, *de bene esse*, saving all just exceptions : the said C. D. being upwards of seventy years old [*Or*, dangerously ill—*Or*, about to go abroad (*a*)].

If a special examiner is necessary, add : and that E. F., of (*residence and addition*), may be appointed an examiner, to take such examination.

An affidavit in support accompanies (*b*).

(*x*) See 32nd Ord. Dec. 1833 ; Sand. Ord. 786 ; Beav. Ord. 58 ; Gresley, 547.

(*y*) As to the examination of witnesses *de bene esse*, see Dan. Pr. 814—822.

(*z*) See Dan. Pr. 817. For order in like case, see Seton, 1236, No. 2.

(*a*) As to the order being of course, where the ground is that the witness is about to go abroad, see Dan. Pr. 817 ; Gilb. For. Rom. 140 ; *M'Kenna* v. *Everitt*, 2 Beav. 188, 191 ; *M'Intosh* v. *Great Western Railway Co.*, 1 Hare, 328, 330.

(*b*) See *post*, No. 842. The Record and Writ Clerk's certificate of bill filed, and of appearance or non-appearance by defendant, will also be required.

840.

Petition of course, for the like (*c*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

1. Your petitioner [*Or*, The plaintiff] lately filed his bill in this cause against the defendant [*Or*, your petitioner]: who has appeared thereto; but issue has not yet been joined in this cause.

2. C. D., of (*residence and addition*), is a material witness in this cause for your petitioner: without whose testimony your petitioner cannot safely proceed to a hearing of this cause.

3. The said C. D. is upwards of seventy years old [*Or*, dangerously ill—*Or*, about to go abroad]; and your petitioner is desirous to examine him *de bene esse*.

Your petitioner therefore humbly prays, that he may be at liberty to examine the said C. D. as a witness on his behalf in this cause *de bene esse:* saving all just exceptions—*If so:* and that E. F., of (*residence and addition*), may be appointed an examiner to take such examination.

And your petitioner will ever pray, &c.

841.

Notice of motion, or summons, for leave to examine a witness *de bene esse* (*d*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to examine C. D., of (*residence and addition*), as a witness on his behalf in this cause *de bene esse:* saving all just exceptions:

If a special examiner is necessary, add: and that E. F., of (*residence and addition*), may be appointed an examiner, to take such examination:

with the usual directions.

(*c*) See notes to No. 839, *ante*. For order, on plaintiff's petition of course before appearance, to examine a witness 70 years old *de bene esse*, on notice of the order being given to the defendants, or a copy left at their dwelling-houses or usual places of abode, ten days before the examination, see *Soffe* v. *Prince*, M. R., 26 Mar. 1870, Rolls' Lib.; and see Dan. Pr. 818.

(*d*) See Dan. Pr. 817, 819. For order, on summons, for defendants to examine the plaintiff *de bene esse*, appointing a special examiner to take such examination in the manner prescribed by the 15 & 16 Vic. c. 86, and directing the order to be served on the plaintiff three days before the examination, see *Wilson* v. *Simpson*, V. C. M. at Chambers, 17 Dec. 1869, Reg. Lib. B. 3071. As to when a special application is necessary, see Dan. Pr. 817; and see Ord. 5 Feb. 1861, r. 11.

842. Affidavit in support of motion, petition, or summons (*e*).

In Chancery.

(*Title of the cause, and reference to the record.*)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiff [*Or*, defendant A. B.], make oath and say, as follows:

1. C. D., of (*residence and addition*), is a material witness in this cause for the plaintiff [*Or*, defendant A. B.].

2. The said C. D. is (*Show the special ground for the application; as thus:* upwards of seventy years of age—*Or*, in a dangerous state of health—*Or*, about to go out of the jurisdiction of this honourable Court (*f*)—*or as may be*).

3. *If a special examiner is necessary, show his fitness to be appointed: see ante*, No. 802.

4. *Show means of knowledge.*

Sworn (*&c.: see ante*, No. 12).

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843. Notice of intention to examine the witness (*g*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to examine C. D., of (*Insert description of the witness*), as a witness on his behalf in this cause *de bene esse*, under the order in this cause dated the —— day of ——, 187—, before E. F., esquire (*Continue as in* No. 794, *ante, to the end*).

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844. Formal parts of deposition of the witness (*h*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Deposition of a witness examined *de bene esse*, pursuant to an order made in the above cause, dated the —— day of ——, 187— (*i*),

before me,

E. F., examiner [*Or*, special examiner appointed by the said order—*Or*, by order in this cause dated the ——, 187—].

(*e*) See Dan. Pr. 818.

(*f*) If the application is made on the ground that the witness is the only person who knows the fact, the affidavit should state the particular points to which his evidence is meant to apply; and should show the ground which the deponent has for believing that the witness is the only person: Dan. Pr. 818.

(*g*) See Dan. Pr. 819; Ord. 5 Feb. 1861, r. 22.

(*h*) See Dan. Pr. 819; Braithwaite's Pr. 115. For the mode in which the examination is taken, see Dan. Pr. 819.

(*i*) As to stating where the examination took place, see *ante*, Nos. 795, n. (*m*), 824.

Sworn —— day of ——, 187—. } C. D., of (*residence and addition*), examined on behalf of the plaintiff [*Or* defendant A. B.], saith as follows:

(*Continue as in* No. 828, *ante, to the end.*)

845.

Notice of motion, for leave to use deposition taken *de bene esse* (*k*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty at the hearing of this cause to read and make use of the deposition of C. D., taken on his behalf *de bene esse*, and filed on the —— day of ——, 187—, under the order in this cause dated the —— day of ——, 187—.

846.

Affidavit in support (*l*).

Formal parts: see ante, No. 9.

1. Issue was joined in this cause on the —— last; and the time for taking evidence therein expired on the —— last.

2. *Show special grounds for the application; as thus:* C. D., in the order in this cause dated the —— of ——, 187—, named, died on the —— day of —— last. He is the same person as C. D. named in the paper writing marked A. now produced and shown to me (*Exhibit certificate of death or burial* (*m*)), and purporting to be a copy of an entry in the Register book of deaths [*Or*, burials] kept for (*Describe the Register book*).

3. *Show that due diligence was used to examine the witness in chief, in the ordinary course; and why it did not take place.*

4. *Show means of knowledge.*

(*k*) See Dan. Pr. 821. For order in like case, on summons, see *Walker* v. *Walker*, V. C. S. at Chambers, 13 Nov. 1866, Reg. Lib. B. 2393. For affidavit of service of the notice of motion, see *ante*, No. 47.

(*l*) See Dan. Pr. 821.

(*m*) For form of memorandum of exhibit, see *ante*, No. 43.

Section X.—Demurrers by Witnesses (*n*).

847.
Demurrer or objection, by a witness (*o*).

In Chancery.

(*Reference to the record.*)

Between (*Set out the full title of the cause*).

Demurrer or objection of a witness examined in the above cause (*p*),

before me,

C. D., examiner [*Or*, special examiner appointed by order in this cause dated the ——, 187—].

Sworn —— day of ——, 187—. } A. B., of (*residence and addition*), called on behalf of the plaintiff [*or as may be*].

Question :— } (*Set forth the question or questions put, the demurrer or objection of the witness thereto, and the examiner's opinion thereon: see ante*, No. 828.)
Answer :— } A. B.

I refer this matter to the Court.

C. D.

The evidence contained in this sheet of paper was taken by me, and was afterwards read over to the witness, and signed by him, in the presence of the parties attending.

C. D.

848.
Petition to set down demurrer, in a cause attached to a Vice-Chancellor's Court (*q*).

Title—and address to the L. C.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant].

Showeth as follows:

1. Your petitioner's [*Or*, The plaintiff's] bill in this cause is marked with the words "Lord Chancellor—Vice-Chancellor Stuart [*Or*, Malins—*Or*, Bacon]"; and this cause is now attached to the Court of the said Vice-Chancellor.

(*n*) As to demurrers by witnesses, and the grounds on which witnesses may protect themselves from answering, see Dan. Pr. 823—826; 15 & 16 Vic. c. 86, s. 33; Braithwaite's Pr. 538, 539; Seton, 1235; 2 Phill. on Evid. 487, *et seq.*; Taylor, s. 1308, *et seq.*; Best, ss. 173—186; Gresley, 80, *et seq.* For notice of motion that a witness, refusing to produce a document under a *subpœna duces tecum*, may be ordered to attend and produce the same, see *ante*, No. 816.

(*o*) See Dan. Pr. 824; Braithwaite's Pr. 538.

(*p*) As to stating where the examination took place, see *ante*, Nos. 795, n. (*m*), 824.

(*q*) See Dan. Pr. 825; Braithwaite's Pr. 539. For order in like case, see Seton, 1257, No. 10. For the practice as to setting down demurrers, see Dan. Pr. 511; and notes to Nos. 497, 498, *ante*.

2. A. B. was lately examined as a witness in this cause on behalf of your petitioner, before C. D., esquire, one of the examiners of this honourable Court ;

Or, the examiner specially appointed to take the examination of witnesses in this cause ;

and he has demurred or objected to answer a certain question put to him on such examination.

3. The said question, and demurrer or objection, have been taken down by the said examiner in writing, and filed in the Record and Writ Clerks' office, pursuant to the Statute in this behalf.

4. Your petitioner is desirous to have the validity of the said demurrer or objection decided.

Your petitioner therefore humbly prays, that the said demurrer or objection may be set down to be argued before your lordship, next after the pleas, demurrers, and exceptions to answers already appointed for hearing before the said Vice-Chancellor.

And your petitioner will ever pray, &c.

G. H.,
Plaintiff's [*Or*, Defendant's] solicitor.
——, 187—.

849.

Petition to set down demurrer, in a cause attached to the Rolls' Court (*r*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant].

Showeth as follows:

1. Your petitioner's [*Or*, The plaintiff's] bill in this cause is marked with the words "Master of the Rolls"; and this cause is now attached to your lordship's Court.

2. A. B. was lately (*Continue as in* No. 848, *ante, to the end: omitting* before the said Vice-Chancellor).

850.

Notice of motion, that an objecting witness may again attend the examiner (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant], that A. B., a witness sworn and examined in this cause on behalf of the plaintiff [*or as may be*] on the —— of ——, 187—, before C. D., esquire, one of the examiners of this honourable Court,

Or, the examiner specially appointed to take the examination of witnesses in this cause,

(*r*) See *ante*, No. 848, n (*q*). A fee of 5*s*. higher scale, or 1*s*. lower scale, is payable on the petition: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

(*s*) See Dan. Pr. 826.

may be ordered to attend at his own expense before the said examiner, at such time and place as the said examiner shall appoint, to be further examined as a witness for the plaintiff [*or as may be*] in this cause; and that the said A. B. may be ordered then and there to answer the question which he demurred to, or objected to answer, upon his aforesaid examination on the —— of ——, 187—; that is to say: (*State, or set out, the question*); and that the said A. B. may be ordered to pay the costs of and occasioned by his said demurrer or objection, and of this application.

CHAPTER XXIII.

SETTING DOWN THE CAUSE FOR HEARING (*a*).

851.
Consent to cause being set down, before the time for taking evidence has expired (*b*).

In Chancery.

(*Short title, and reference to the record.*)

We consent to this cause being set down forthwith for hearing, notwithstanding the time for taking evidence therein has not expired. Dated this —— day of ——, 187—.

A. B., plaintiff's solicitor.
C. D., solicitor for defendant E. F.
G. H., agent for all the other defendants.

852.
Certificate of Record and Writ Clerk, that cause is fit to be set down (*c*).

In Chancery.

(*Name of Judge* (*d*), *and reference to the record.*) (*Short title* (*e*).)

These are to certify, that this cause is in a fit state to be set down for hearing, as appears by my book.

If so: and that an order has been made to take evidence in chief *vivâ voce* at the hearing (*f*).

Dated this —— day of ——, 187—.

A. B.,
C. R. & W.

(*a*) As to the time for, and mode of, setting down a cause for hearing after replication, or on bill and answer, or after an order to take the bill *pro confesso*, see Dan. Pr. 827—830; Ord. XXI. 1, 4; XXXIII. 10 (3), 12; XXXVII. 13 (4). As to setting down a cause, pending the taking of evidence, see Dan. Pr. 784, n. (*z*), 828; and *ante*, No. 791, n. (*f*). As to setting down a notice of motion for decree, see *ante*, No. 707, *et seq.*; a record for trial, *post*, No. 1057; or a special case, *post*, Chap. XLIII. For forms of notice of motion, and summons, to fix a day for the hearing, where evidence *vivâ voce* is to be taken thereat, see *ante*, No. 832. As to the transfer of causes set down for hearing, see *ante*, Nos. 199—202, and notes thereto.

(*b*) See Dan. Pr. 828; Braithwaite's Pr. 427.

(*c*) See Dan. Pr. 829; Braithwaite's Pr. 428; Ord. XXI. 2. A fee of 4*s.* is payable, in a fee fund stamp, affixed to the certificate: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

(*d*) Insert name of Judge to whose Court the cause is attached: Dan. Pr. 829, n. (*x*); Ord. VI. 2, 3.

(*e*) Where the cause is to be set down at a defendant's instance, add, "at the request of the defendant B. A.", beneath the title: Dan. Pr. 828, 830; Ord. XXI. 1; and where it is to be set down on an order to take the bill *pro confesso* against a sole defendant, add, "on order to take bill *pro confesso*."

(*f*) See Dan. Pr. 807, 830; Ord. 5 Feb. 1861, r. 8.

853.

Memorandum to be indorsed on the certificate (*g*).

If there is an infant defendant, say: A guardian *ad litem* has been appointed to the infant defendant A. B.

Or, if there is not, say: There is not any infant defendant.

C. D., plaintiff's solicitor
[*Or*, solicitor for defendant B. A.],
——, 187—.

(*g*) See Dan. Pr. 829; Reg. Regul. 15 Mar. 1860, r. 7.

CHAPTER XXIV.

SUBPŒNA TO HEAR JUDGMENT (*a*).

854.

Præcipe for the *subpœna* (*a*).

In Chancery.

(*Reference to the record.*)

A.) Seal a *subpœna* to hear judgment on behalf of the
v. > plaintiff [*Or*, defendant A. B.], directed to the defendant
B.) [*Or*, plaintiff].

Returnable on the —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

855.

The *subpœna* (*b*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert defendants' names* (*c*)), greeting:

We command you (*If more than one, add:* and every of you), that you appear before our Lord High Chancellor (*d*) [*Or*, his lordship the Master of the Rolls—*as the cause may be set down*], on the —— day of ——, next (*e*), or whenever thereafter a certain cause now depending in our High Court of Chancery wherein A. B. (*f*) is plaintiff, and C. D. is defendant (*g*),

Or, wherein A. B. and others [*Or*, another] are plaintiffs (*f*), and C. D, and others [*Or*, another] are defendants (*g*),

(*a*) As to when the *subpœna* is necessary, and the mode of issuing and serving it, see Dan. Pr. 831—834; and see Ord. XXI. 1—5; XXXIII. 10 (3).

(*b*) See Dan. Pr. 831; Ord. XXVIII. 2, and Sched. E. No. 1; and see *ante*, No. 763, n. (*q*). As to correcting errors in the *subpœna*, see Dan. Pr. 833; Ord. XXVIII. 5; and *ante*, No. 762, n. (*p*).

(*c*) If issued at a defendant's instance, insert the names of the plaintiff, and of the co-defendants only. Each *subpœna* must be stamped with a 5*s.* chancery fee fund stamp: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.; and it may contain the names of three defendants, when necessary or required: husband and wife being counted as one: Dan. Pr. 831; Ord. XXVIII. 3.

(*d*) These words are to be inserted, where the cause is set down to be heard before a Vice-Chancellor.

(*e*) Insert here the date mentioned in the Registrar's *subpœna* note: Ord. XXI. 3; Dan. Pr. 831, 832.

(*f*) The title to be here set forth should follow that in the certificate to set down the cause: see Braithwaite's Pr. 257, n. (*c*).

(*g*) If the cause is set down at a defendant's instance, add here, "at the request of the defendant B. A.": Dan. Pr. 832.

shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then or thereafter be made and pronounced: upon pain of judgment being pronounced against you by default. Witness (*&c.: Conclude as in* No. 313, *ante*).

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856. Indorsement thereon (*h*).

The same as *ante*, No. 4, *or* 7.

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857. Motion paper, for leave to advertise notice of the *subpœna*, as substituted service thereof (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for leave, on or before the —— day of ——, to advertise in the London Gazette, and the (Worcester Journal), a notice of a *subpœna* to hear judgment having been issued in this cause; and that publication as aforesaid of such notice may, from the time when the insertion thereof in the said newspapers shall have been made, be deemed good service of the said *subpœna* on the defendants J. C. and T. C.

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858. Affidavit of service of the *subpœna*, on a defendant (*k*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served the defendant C. D., with a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, by delivering to, and leaving with, the said defendant C. D., at (*State where*), in the (county) of ——,

Or, with the wife—*Or*, son—*Or*, daughter—*Or*, servant—of the said defendant C. D., at the dwelling-house, or usual place of abode of the said defendant, situate at (*State where*), in the (county) of ——,

a true copy of the said *subpœna*, and of an indorsement thereon in the form prescribed by the General Orders of this honourable Court in that behalf; and I, at the time of such service, showed to the said defendant C. D.

Or, to the said wife—*Or*, son—*Or*, daughter—*Or*, servant—of the said defendant C. D.

the said original *subpœna* so under seal as aforesaid.

2. By the said *subpœna* the said defendant C. D. was commanded to appear before (*Recite the subpœna, from these words to* thereafter, *and continue thus:*) this cause should come on (*Continue the recital of the subpœna, from these words to the end*).

(*h*) Ord. III. 2, 5; Dan. Pr. 378, 379.

(*i*) *Lechmere* v. *Clamp*, M. R., 25 May, 1861, Reg. Lib. B. 951: 30 Beav. 218; Dan. Pr. 833; and see S. C., *ante*, No. 721, n. (*l*). As to the contents of the affidavit in support, see *ante*, No. 722.

(*k*) As to the time for, and mode and proof of, service of the *subpœna*, see Dan. Pr. 831—834; Ord. XXI. 5; XXVIII. 6, 7, 9. The affidavit must state when, where, how, and by whom the service was effected: Ord. XXVIII. 8; Dan. Pr. 834. As to a new service, where plaintiff dies after cause set down, see Dan. Pr. 833.

859.

Affidavit of service of the *subpœna*, on the solicitor of a defendant (*l*).

Formal parts: see ante, No. 9.

1. On the —— of ——, 187—, I served Mr. E. F., the solicitor in this cause for the defendant A. B., with a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, by delivering to, and leaving with, the said E. F., at (*State where*), in the (county) of ——,

Or, with the clerk—*Or*, servant—of the said F. F., at his office, situate at (*State where*), in the (county) of ——,

a true copy of the said *subpœna*, and of an indorsement thereon in the form prescribed by the General Orders of this honourable Court in that behalf; and I, at the time of such service, produced and showed to the said E. F.

Or, to the said clerk—*Or*, servant

the said original *subpœna* so under seal as aforesaid.

2. By the said *subpœna* the said defendant C. D. was commanded to appear before (*Recite the subpœna, as in* No. 858, *par.* 2, *ante*).

860.

The like, of several defendants (*l*).

Formal parts: see ante, No. 9.

1. On the —— of ——, 187—, I served Mr. G. H., the solicitor in this cause for the defendant C. D., and Mr. J. K., the solicitor in this cause for the defendant E. F., and on the —— day of ——, 187—, I served Mr. L. M., the solicitor in this cause for the defendants N. O., and P. his wife, with a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, by delivering to, and leaving with, each of the persons hereinafter named, at the respective places hereinafter mentioned, a true copy of the said *subpœna*, and of an indorsement thereon, in the form prescribed by the General Orders of this honourable Court in that behalf; that is to say: (1) to and with the said G. H., personally, at (*State where*), in the (county) of ——; (2) to and with the clerk of the said J. K., at his office situate at (*State where*), in the (county) of ——; and (3) to and with the servant of the said L. M., at his address for service, situate at (*State where*), in the (county) of ——.

2. At the time of the service as aforesaid of the said *subpœna*, I showed to each of the persons to whom such true copy thereof was delivered as aforesaid the said original *subpœna* so under seal as aforesaid.

3. By the said *subpœna* the said defendants C. D., E. F., and N. O., and P. his wife, were, and every of them, was commanded to appear before (*Recite the subpœna, as in* No. 858, *par.* 2, *ante*).

(*l*) As to service on the solicitor, see Dan. Pr. 832—834; Ord. XXVIII. 7; and see note to No. 858, *ante*. Where the solicitor is concerned for more than one defendant, a copy for each defendant should be served on him: Dan. Pr. 832, n. (*t*).

861.
Affidavit of having been served with the *subpœna* (*m*).

Formal parts : see ante, No. 9.

I, G. H., of (*Place of business*), gentleman, the solicitor

Or, I, W. A., of (*Residence*), clerk to Mr. G. H., of (*Place of business*), gentleman, the solicitor

in this cause for the defendant C. D., make oath and say, as follows :

1. On the —— of ——, 187—, I, as such solicitor as aforesaid,

Or, I, as such clerk as aforesaid—*or as may be*,

was duly served (*State where ; as thus :* at my office

Or, at the office of the said G. H.),

situate at (*State where*), in the (county) of ——, by (*State whom ; as thus :* Mr. R. S.—*Or*, a clerk of Mr. R. S.—the solicitor in this cause for the plaintiff), with a paper writing purporting to be a copy of a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, and of an indorsement thereon in the form prescribed by the General Orders of this honourable Court in that behalf, and commanding the said defendant to appear before (*Recite the subpœna, as in* No. 858, *par.* 2, *ante*).

2. At the time of the service aforesaid, the said original *subpœna*, so under seal as aforesaid, was produced to me—*or as may be.*

Sworn (*&c. : see ante*, No. 12).

(*m*) See Dan. Pr. 834.

CHAPTER XXV.

HEARING CAUSES (*a*).

862.
Certificate of counsel, that cause is fit to be heard short (*b*).

In Chancery.

(*Short title.*)

I certify that this cause is fit to be heard as a short cause.

A. B., Counsel for the plaintiff.

——, 187—.

863.
Notice that cause has been marked as short (*c*).

Formal parts: see ante, No. 54.

Take notice, that this cause has been marked for hearing as a short cause, in the Registrars' book of causes standing for hearing.

864.
Consent to cause being prematurely heard (*d*).

In Chancery.

(*Short title, and reference to the record.*)

We consent to this cause being placed in the paper of causes for hearing before the Master of the Rolls [*Or*, Vice Chancellor ——]

(*a*) As to the hearing of causes generally, see Dan. Pr. 835—849; Ord. VI. 8; and where the evidence is to be taken *vivâ voce*, Dan. Pr. 799, *et seq.*, 844; Ord. 5 Feb. 1861, rr. 3, 7, 19; and *ante*, Nos. 830—834. As to the power of the Court to require the production of witnesses or parties for oral examination in other cases, see 15 & 16 Vic. c. 86, s. 39; Dan. Pr. 780, 808, 840. For the mode of procuring the attendance of witnesses at the hearing, see *ante*, No. 760, *et seq.* As to the proof of exhibits *vivâ voce* or by affidavit thereat, see Dan. Pr. 777—781; and *ante*, No. 755, *et seq.* For forms of notices to admit and produce documents, and of admission and affidavit of service, see *ante*, Nos. 745—749. As to obtaining the assistance of a Common Law Judge, see 14 & 15 Vic. c. 83, s. 8; Dan. Pr. 846; and scientific assistance, 15 & 16 Vic. c. 80, ss. 42, 43; Dan. Pr. 846; and *post*, Chap. XXIX. As to objections for want of a stamp, see Dan. Pr. 746, 776, 845; Stamp Act, 1870 (33 & 34 Vic. c. 97), s. 16.

(*b*) See Dan. Pr. 836; Reg. Regul. 15 Mar. 1860, r. 10. For a like certificate as to a motion for decree, see *ante*, No. 711.

(*c*) See Dan. Pr. 836. For form of affidavit of service of the notice, see *ante*, No. 47. For a like notice as to a motion for decree, see *ante*, No. 712.

(*d*) See Dan. Pr. 836; Reg. Regul. 15 Mar. 1860, r. 10.

on the —— day of ——, 187—. Dated this —— day of ——, 187—.

A. B., solicitor for the plaintiff.
C. D., solicitor for the defendant E. F.
G. H., solicitor for all the other defendants.

865.

Request that hearing of cause may stand adjourned (*e*).

In Chancery.

(*Short title, and reference to the record.*)

We request and consent that this cause, which is set down to be heard before the Master of the Rolls [*Or*, Vice-Chancellor ——], be not placed in the paper of causes for hearing until the —— day of ——, 187—; and that it be marked in the Registrars' book of causes as standing over to that day. Dated (*&c.: Conclude as in* No. 864, *ante*).

To the Registrars of the Court of Chancery.

866.

Certificate that cause is abated or compromised (*f*).

In Chancery.

(*Short title, and reference to the record.*)

I certify that this cause, which now stands in the Registrars' book of causes for hearing before the Master of the Rolls [*Or*, Vice-Chancellor ——, *—or as may be*], has become abated by (*State how—Or*, is compromised). Dated this —— day of ——, 187—.

A. B., plaintiff's solicitor.

To the Registrars of the Court of Chancery.

867.

Briefs on the hearing (*g*).

(1) Contents.

The brief for the plaintiff will consist of a printed copy of his bill, of each answer, and of all the evidence. The brief for each defendant will comprise a printed copy of the bill, of his own answer, of his own and the plaintiff's evidence, and of such evidence of co-defendants as he has had notice will be read against him (*h*). In pauper causes, where the answers are not printed, written copies will of course be furnished. The brief in each case should be accompanied by such observations as may be deemed advisable, and by such copies of, or extracts from, other documents, as may be necessary. The printed documents are delivered in a separate form; and the brief, according to the present practice, usually consists of an introductory list or index of such documents as

(*e*) See Dan. Pr. 838; Ord. XXI. 13; Reg. Regul. 15 Mar. 1860, r. 13. As to the adjournment of the hearing, on payment of the costs of the day, see Dan. Pr. 839; Ord. XL. 22.

(*f*) See Dan. Pr. 840; Ord. XXI. 7, 8, 13. A fee of 6*s*. 8*d*. is allowed for this certificate: Regul. to Ord. Sched. 2; *post*, Chap. XXXI. As to restoring a cause after revivor, see Dan. Pr. 840.

(*g*) See Dan. Pr. 841, n. (*z*). As to the formal mode of hearing causes, and examining witnesses at the hearing, see *ib.* 844, 845. As to private hearings, see *ib.* 848. As to consultation and refresher fees, see *ib.* 841, n. (*z*). For form of brief on motion for decree, see *ante*, No. 714; and on a trial before the Court by or without a jury, see *post*, No. 1182.

(*h*) See Dan. Pr. 785, 814.

accompany it, and of the observations : according to the following sketch.

In Chancery.
(*Name of Judge.*)
(*Full title of the cause, and reference to the record.*)
Brief for the plaintiff [*Or*, defendant A. B.].

I. Index to Papers.

A printed copy of each of the following documents accompanies this brief:—

1. The plaintiff's amended bill, filed ——, 187—.
2. The answer of the defendant A. B., filed ——, 187—, to the original bill.
3. His further answer, filed ——, 187—, thereto.
4. His answer, filed ——, 187—, to the amended bill.
5. The answer of the defendant C. D., filed ——, 187—, to the amended bill.
6. Depositions and affidavits filed on the part of the plaintiff, viz.:
   (*a*) Deposition of E. F., filed ——, 187—.
   (*b*) Affidavit of G. H., filed ——, 187—.
   (*c*) His cross-examination thereon, filed ——, 187—.
   (*d*) Joint affidavit of L. M. and N. O., filed ——, 187—.
7. Depositions and affidavits filed on the part of the defendant A. B.
   (*e*) Deposition (*&c., as above*).
8. Affidavit filed on the part of the defendant C. D.
   (*f*) Affidavit of the said defendant C. D., filed ——, 187—.

II. Observations.

[The observations to be copied here.]

(*Fold the brief longways, and indorse it thus:*)

(2) Indorsement.

In Chancery.
(*Name of Judge by whom the cause is to be heard: see ante*, No. 53.)
Styles *v.* Brown. } Brief on the hearing.
For the plaintiff.
[*Or*, defendant A. B.]
Mr. C.
Guas.
Consultation „
With you,
Mr. D.
Consultation fixed for —— the ——, 187—, at —— o'clock, at ——.
(*Add name, &c., of solicitor or party instructing: see ante*, No. 4, *or* 7.)

CHAPTER XXVI.

DECREES AND ORDERS (*a*).

SECTION I.—GENERAL NATURE OF DECREES AND ORDERS (*b*).

868. Notice of motion, for preliminary accounts and inquiries (*c*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that, pursuant to the 20th Consolidated Order, the following accounts and inquiries may be directed to be taken and made in this cause; that is to say:—

1. }
2. } (*Set them out in numbered paragraphs.*)

---

869. Notice of motion, by defendant the mortgagor, in a foreclosure suit, for the usual decree to be made under 7 Geo. II., c. 20 (*d*).

Formal parts: see ante, No. 55.
on the part of the defendant, that: upon the defendant admitting the mortgage securities in the pleadings mentioned, and that the principal and interest secured thereby are still due to the plaintiff, and offering to pay the same to the plaintiff, together with his costs of this suit (and at law), pursuant to the statute 7th George the Second, chapter 20: a decree may be made according to the prayer of the plaintiff's bill [*or as may be*].

(*a*) As to decrees and orders, see, generally, Dan. Pr. 850—938.

(*b*) See Dan. Pr. 850—862. For the distinction between interlocutory and final decrees, see, generally, Dan. Pr. 850; in suits for specific performance, *ib.* 851, 852, 1111—1117; and in foreclosure and redemption suits, *ib.* 858—861, 1138, 1139; and see *post*, Chap. XXIX. As to declaratory decrees, without consequential relief, see 15 & 16 Vic. c. 86, s. 50; Dan. Pr. 861. As to the reservation of liberty to apply, see Dan. Pr. 861.

(*c*) See Dan. Pr. 854. For the cases in which preliminary accounts and inquiries will be directed on motion, see Dan. Pr. 854; Ord. XX.

(*d*) See Dan. Pr. 855; and see *ib.* 694, 858, 859; 7 Geo. II. c. 20, s. 2; 2 Van Hey. 390; Fisher on Mort. 362; Seton, 364, No. 1; 367, No. 2; 389. For order, on motion by defendant, in a foreclosure suit, to pay the mortgage money and interest into Court, without prejudice to any question in the cause, see *Edmunds* v. *Lord Brougham*, V. C. S., 20 Dec. 1865, Reg. Lib. A. 2411.

Section II.—Form of Decrees and Orders (*e*).

870.
Mandatory parts of a decree for the general administration of real and personal estate of a testator, on a bill by trustees and executors, or person interested, or on summons by person interested, under the will (*f*).

If on bill.—This Court doth declare that the trusts of the will of A. B., the testator in the bill named, ought to be performed and carried into execution: and doth order and decree the same accordingly.

[*If plaintiffs are accountable parties, insert:* And the plaintiffs by their bill [*Or*, counsel] submitting to account,]

It is ordered, that the following accounts and inquiries be taken and made, that is to say:—

1. An account of the personal estate not specifically bequeathed of (the said) A. B., the testator in the bill [*Or*, summons] named, come to the hands of the plaintiffs, and [*or*] the defendants C. D., and E. F., the executors of his said will, or any [*Or*, either] of them, or to the hands of any other person or persons by the order or for the use of the said plaintiffs and [*or*] defendants, or any [*Or*, either] of them.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the legacies and annuities given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of (*g*).

And it is ordered, that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses, in a due course of administration, and then in payment of the legacies and annuities given by his will. And it is ordered, that the following further inquiries and accounts be made and taken, that is to say:—

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

If ordered:

7. An account of the rents and profits of the testator's real estate received by the plaintiffs and [*or*] defendants C. D., and E. F., or any [*Or*, either] of them, or by any other person or persons by the order or for the use of the said plaintiffs and [*or*] defendants, or any [*Or*, either] of them.

(*e*) See Dan. Pr. 862—869. As to the frame and usual directions in decrees and orders, see *ib.*; Ord. XXIII. 1—11; and see Seton, x., xi., 1—96; and the excellent collection, in that work, of forms of decrees and orders, with practical notes.

(*f*) See Dan. Pr. 865. This, and No. 871, *post*, are printed from the Forms now used by the Registrars, in like cases; and are based on Cons. Ord. Sched. D: which Ord. XXIII. 15 directs may be used, with such variations as the circumstances of the case may require. As to numbering the accounts and inquiries, see Ord. XXIII. 15; Dan. Pr. 865; Regul. 8 Aug. 1857, r. 4.

(*g*) See Ord. XXIII. 14; Dan. Pr. 865.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

If a sale is ordered:

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed, in respect of their incumbrances.

10. An inquiry what are the priorities of such last mentioned incumbrances.

11. And it is ordered, that the testator's real estate be sold, with the approbation of the Judge: free from the incumbrances (if any) of such of the incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

And it is ordered, that the money to arise by the sale of the testator's real estate be paid into the bank with the privity of the Accountant-General to the credit of this (matter and) cause (*Short title, and reference to the record*), to an account to be entitled "Proceeds of sale of the testator's real estates", subject to further order. And if such money, or any part thereof, shall arise from real estate sold with the consent of incumbrancers, the money so arising is to be applied in the first place in payment of what shall appear to be due to such incumbrancers, according to their priorities.

And it is ordered, that the further consideration of this (matter and) cause be adjourned; and any of the parties are to be at liberty to apply to this Court as they shall be advised.

871.

Mandatory parts of a decree for the administration of the real and personal estate of an intestate or testator, in a creditor's suit by bill, or on summons (*h*).

It is ordered, that the following accounts and inquiry be taken and made, that is to say:—

1. An account of what is due to the plaintiff, and all other the creditors of A. B., deceased, the intestate [*Or*, testator] in the bill [*Or*, summons] named.

2. An account of the intestate's [*Or*, testator's] funeral expenses.

3. An account of the intestate's [*Or*, testator's] personal estate come to the hands of the defendants C. D., and E. F., the administrators of his effects [*Or*, executors of his will], or of any [*Or*, either] of them, or to the hands of any other person or persons by their or any [*Or*, either] of their order, or for their or any [*Or*, either] of their use.

4. An inquiry what parts (if any) of the intestate's [*Or*, testator's] personal estate are outstanding or undisposed of (*i*).

And it is ordered that the intestate's [*Or*, testator's] personal estate be applied in payment of his debts and funeral expenses in a due course of administration.

(*h*) See *ante*, No. 870, n. (*f*).

(*i*) See Ord. XXIII. 14; Dan. Pr. 865.

And in case the intestate's [*Or*, testator's] personal estate shall be insufficient for the payment of his debts and funeral expenses, it is ordered that the following further inquiries and account be made and taken, that is to say:—

5. An inquiry what real estate the intestate [*Or*, testator] was seised of or entitled to at the time of his death.

6. An inquiry what incumbrances (if any) affect the intestate's [*Or*, testator's] real estate, or any and what parts thereof.

If a sale is ordered:

7. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed, in respect of their incumbrances.

8. If necessary, an inquiry what are the priorities of such last mentioned incumbrances.

9. And it is ordered, that the intestate's [*Or*, testator's] real estate, or a sufficient part thereof to make good the deficiency of the intestate's [*Or*, testator's] personal estate, be sold, with the approbation of the Judge: free from the incumbrances (if any) of such of the incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

And it is ordered, that the money to arise by the sale of the intestate's [*Or*, testator's] real estate be paid into the bank, with the privity of the Accountant-General, to the credit of this (matter and) cause (*Short title, and reference to the record*), to an account to be entitled "Proceeds of sale of the intestate's [*Or*, testator's] real estates", subject to further order. And if such money, or any part thereof, shall arise from real estate sold with the consent of incumbrancers, the money so arising is to be applied in the first place in payment of what shall appear to be due to such incumbrancers, according to their priorities.

And it is ordered, that the further consideration of this (matter and) cause be adjourned; and any of the parties are to be at liberty to apply to this Court as they shall be advised.

872.
Proposed minutes of a decree or order (*k*).

In Chancery.

(*Short title, and reference to the record.*)

Proposed minutes of decree [*Or*, order].

CUR.—Declare as follows:
1. That, *&c.*
Order as follows:
2. That, *&c.*

} (*Set out the proposed declarations, and directions: See* Nos. 870, 871, *ante.*

Approved:

A. B., for the plaintiff, *&c.*

(*k*) As to the preparation and approval of minutes of a decree or order, see Dan. Pr. 836, n. (*k*), 875.

Section III.—Drawing up, Passing, and Entering Decrees and Orders (*l*).

873. Registrar's appointment to settle draft of, or to pass, a decree or order (*m*).

Chancery Registrars' Office, Chancery Lane,
——, 187—.

A. *v.* B.

[*Or*, In the Matter of A.]

I have appointed ——, the —— day of ——, 187—, at —— o'clock in the forenoon, to settle the draft of [*Or*, to pass] the decree [*Or*, order] pronounced in this cause [*Or*, matter] by (the Master of the Rolls) on the —— day of ——, 187—.

C. D., Registrar.

---

874. Notice of motion, for counsel's brief to be produced within a limited time (*n*).

Formal parts: see ante, No. 55.

on the part of the plaintiffs, that unless the defendant A. B., or his solicitor, do, on or before the —— day of ——, produce to the Registrar the brief of the counsel for the said defendant A. B., on the motion of the plaintiffs for a receiver on the —— day of —— last, in this cause, the Registrar may be ordered to draw up the order on the said motion, without the production of such brief.

(*l*) See Dan. Pr. 869—879; Ord. I. 17—33, 48—50; and see Prel. Ord. 10 (11). As to the mode of copying minutes of decrees and orders, see Ord. 28 Nov. 1743: Sand. Ord. 565, 566; Seton, 4; as to passing, entering, and rectifying decrees and orders, see, generally, Seton, 1137, *et seq.*; and as to obtaining office copies, see Dan. Pr. 878, 879; Ord. XXXVI. 1, 2. A fee of £1 higher scale, or 10*s.* lower scale, is payable for an office copy, if taken of the Registrar; and 4*d.* per folio, if taken from the Report office: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. As to the fees payable on a decree or order, see *ib.*; Dan. Pr. 875, n. (*i*). As to the mode of keeping and referring to the Registrars' books, see Seton, 2; and as to searches therein, see Ord. I. 19; Dan. Pr. 878. A fee of 6*d.* is payable, in a Chancery fee fund stamp, on every application for a search in the Report office: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

(*m*) See Dan. Pr. 869, 873, 875, 876; Reg. Regul. 15 Mar. 1860, rr. 15—36; Ord. I. 23, 29. For a list of the papers to be left with the Registrar on bespeaking a decree or order, see Dan. Pr. 870—873. For form of affidavit of service of the appointment, see *ante*, No. 47. For form of certificate that the cause was commenced before Michaelmas Term, 1852, see *ante*, No. 2.

(*n*) *Yeatman* v. *Read*, 14 W. R. 123, V. C. K.; and see Ord. I. 28; Dan. Pr. 873, n. (*k*).

875.

Notice of motion, to vary minutes (*o*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that the minutes of the decree [*Or*, order] pronounced in this cause by his lordship the Master of the Rolls [*or as may be*] on the —— day of ——, 187—, as given out by the Registrar, may be varied or altered in the respects following, namely: (*Specify the particular matter to be added, or altered*).

876.

Notice of motion, to return engrossment of decree or order (*p*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that Mr. A. B., the solicitor in this cause for the defendant C. D. [*or as may be*], may be ordered, within —— days, to produce to, and leave with, E. F., esquire, one of the Registrars of this honourable Court, the engrossment prepared in the office of the said Registrar of the decree [*Or*, order] pronounced in this cause by his lordship the Master of the Rolls [*or as may be*], on the —— day of ——, 187—: to the intent that the same may be duly passed and entered; and that the said A. B. may be ordered to pay the costs of this application.

877.

Motion paper, to enter decree or order *nunc pro tunc* (*q*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the decree [*Or*, order] made in this cause [*Or*, matter] by the Master of the Rolls [*or as may be*], dated the ——, 187—, and which has been passed by the Registrar, but not yet entered, may be entered *nunc pro tunc*.

878.

Petition of course, for the like (*q*).

Title—and address to the M.R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. A decree [*Or*, An order] pronounced in this cause [*Or*, matter] by your lordship [*or as may be*] on the —— day of ——, 187—, has been passed by the Registrar.

2. By inadvertence [*or other ground*], the said decree [*Or*,

(*o*) See Dan. Pr. 874. For the practice relative to applications to vary minutes, and speaking to causes on the minutes, see Dan. Pr. 874, 875. In *Watson* v. *Griffith*, M. R., 2 June, 1855, Reg. Lib. B. 1011, an order which had been made in the cause, and afterwards varied, was subsequently directed not to be drawn up.

(*p*) See Dan. Pr. 876.

(*q*) *Ibid.*, 877, 878. For order in like case on motion, see Seton, 1137; and on petition, see *Re Osborn*, M. R., 8 Dec. 1869, Rolls' Lib. As to the time allowed to enter a decree or order in the Registrars' books, and, generally, as to such entry, see Dan. Pr. 877.

order] has not yet been entered in the Registrars' book ; and the time limited for entering the same has expired.

Your petitioner therefore humbly prays, that the said decree [*Or*, order] may be entered *nunc pro tunc*.

And your petitioner will ever pray, &c.

879.

Prœcipe for *subpœna*, for infant, on coming of age, to show cause against a decree (*r*).

In Chancery.

(*Reference to the record.*)

B. v. D. } Seal a *subpœna* directed to C. D., to show cause against the decree made by the Lord Chancellor [*or as may be*], dated the —— day of ——, 187—.

Returnable —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4 *or* 7.

880.

The *subpœna* (*s*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert name of defendant*), greeting :

We command you that within —— days (*t*) after the service of this writ on you, exclusive of the day of such service, you do show unto our High Court of Chancery good cause why a certain decree made by our Lord High Chancellor [*or as may be*], on the —— day of ——, 187—, in a certain cause wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

should not be binding upon you. In default whereof such decree will stand and be absolute against you. Witness (*&c.*: *Conclude as in* No. 313, *ante*).

881.

Indorsement thereon (*u*).

The same as *ante*, No. 4 *or* 7.

(*r*) See Dan. Pr. 155; Braithwaite's Pr. 266. For the grounds on which, and how, a decree may be impeached by an infant defendant, and the practice as to giving him a day to show cause, see Dan. Pr. 149—158.

(*s*) See Dan. Pr. 155. For this form, see Ord. XXVIII. 2, and Sched. E., No. 6. The writ must be stamped with a 5*s*. Chancery fee fund stamp: Regul. to Ord. Sched. 4 ; *post*, Chap. XXXI. ; and sealed at the Record and Writ Clerks' office. The decree need not be produced. The service will be of no validity, unless made within twelve weeks after the *teste* of the writ: Dan. Pr. 155 ; Ord. XXVIII. 9. As to correcting and resealing the writ, see *ante*, No. 762, n. (*p*).

(*t*) Eight is the usual number.

(*u*) See Dan. Pr. 155.

882.

Motion paper, for substituted service of the *subpœna* (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of a *subpœna*, directed to the defendant C. D., to show cause why the decree dated the ——, 187—, should not be binding upon him, upon (*State service proposed; as thus:*

A. B. and D. E., members of the firm of B. & E., of No. 18, New Square, Lincoln's Inn, or one of them),

may be deemed good service on the defendant C. D.

The decree, and affidavit in support, accompany.

883.

Motion paper, to make decree absolute (*y*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the decree dated the ——, 187—, may be made absolute against the defendant C. D.

The decree, affidavit in support, and certificate of no cause shown, accompany.

884.

Affidavit in support (*z*).

Formal parts: see ante, No. 9.

1. *Show that defendant is of age; as thus:* C. D., the defendant [*Or*, one of the defendants] in this cause, is the same person as C., the son of E. D., and F. his wife, who is named in the paper writing marked A., now produced and shown to me (*a*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of A., in the county of B., in the year 184—: as I know from (*Show means of knowledge*).

Prove service of subpœna to show cause: as in No. 858, *par.* 1, *ante, if served on the defendant; or as follows, if served on a substitute.* 2. On the —— day of ——, 187—, I served the defendant C. D. with a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, by delivering a true copy of the said *subpœna*, and of an indorsement thereon, in the form prescribed by the General Orders of this honourable Court in that behalf, to, and leaving the same with (*Name of substitute*), at (*State where*), in the (county) of ——; and I, at the time of such service, produced and showed to the said (*Substitute*) the said original *subpœna*, so under seal as aforesaid.

3. By the said *subpœna* the said defendant C. D. was commanded (*Recite the subpœna, to* absolute, *and add:* upon the said C. D.).

In the case of substituted service, add: 4. The said (*Substitute*) is the person of that name mentioned in the order made in this cause

(*x*) See Dan. Pr. 155; Ord. X. 2.

(*y*) See Dan. Pr. 155. For order in like case, see Seton, 685, No. 3.

(*z*) See Dan. Pr. 155.

(*a*) Exhibit it. For form of memorandum thereof, see *ante*, No. 43.

by the Lord High Chancellor [*or as may be*], dated the —— day of ——, 187—, whereby it was ordered that (*Set out directions as to substituted service*); and at the time of the aforesaid service of the said *subpœna*, I also served the said (*Substitute*) with the said order, by delivering to, and leaving with, him a true copy of such order; and I at the same time produced and showed to him such original order duly passed and entered.

885.

Petition of course, by defendant, for leave to come in after decree: plaintiff consenting (*b*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff some time since filed his bill in this cause against your petitioner, and thereby stated, as the fact was, that your petitioner was then out of the jurisdiction of this honourable Court.

2. Your petitioner has never appeared to the said bill.

3. A decree, dated the —— day of ——, 187—, has been made on the hearing of this cause, and thereby certain accounts and enquiries have been directed to be taken and made; but the Chief Clerk has not yet made his certificate of the result thereof [*or as may be*].

4. Your petitioner is now resident within the jurisdiction of this honourable Court; and is desirous to attend the proceedings under the said decree.

5. Your petitioner submits to be bound by the said decree, and all proceedings had in this cause.

Your petitioner therefore humbly prays, that he may be at liberty to enter an appearance to the plaintiff's bill; and that he may have the like benefit of the said decree, and be at liberty to attend all subsequent proceedings in this cause, as if he had appeared at the hearing thereof.

And your petitioner will ever pray, &c.

886.

Notice of motion, or summons, for leave to come in after decree (*c*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A. B., that: upon the said defendant submitting to be bound by the decree dated the —— day of ——, 187—, and all proceedings had in this cause: he may be at liberty (*Continue as in prayer of* No. 885, *ante, to the end*).

(*b*) See Dan. Pr. 139. For order in like case, see *Hulse* v. *Hardstaff*, M. R., 9 May, 1870, Rolls' Lib. For form of consent, see *ante*, No. 59. As to allowing a defendant to come in after decree, on his submitting to be bound thereby, see Dan. Pr. 139, 140, 462. For the practice as to entering an appearance, see *ib.* 459, *et seq.*; and see *ante*, No. 484, *et seq.*

(*c*) See Dan. Pr. 139, 140, 462. For order, in like case, on motion, see Seton, 1250, No. 7; and on summons, *Potts* v. *Britton*, M. R., 22 Dec. 1864, Reg. Lib. B. 2708.

Section IV.—Enrolment of Decrees and Orders (*d*).

887.

Motion paper, for conditional order to enrol, within five years (*e*).

Formal parts: see ante, No. 53.

on behalf of the plaintiff [*Or*, defendant—*or as may be*], for a conditional order to enrol the decree [*Or*, order] made by the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—, notwithstanding the time limited by Cons. Ord. 23, r. 25, has expired.

888.

Motion paper, for absolute order to enrol, by consent (*e*).

Formal parts: see ante, No. 53.

To move on behalf of all parties [*Or*, of the plaintiff—*Or*, defendant—*or as may be*], that, by consent, the decree [*Or*, order] dated the ——, 187—, made by the Master of the Rolls [*or as may be*], may be signed and enrolled.

889.

Notice of motion, for absolute order to enrol, within five years (*g*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant—*or as may be*], that, notwithstanding the time allowed for that purpose by the Consolidated Orders of this Court has expired, the decree [*Or*, order] made in this cause by his Lordship the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—, may be signed and enrolled *nunc pro tunc*.

(*d*) As to the enrolment of decrees and orders, see, generally, Dan. Pr. 879—888; Ord. XXIII. 25—28; Ord. 7 May, 1866. As to what decrees and orders may be enrolled, and at what stage, see Dan. Pr. 881.

(*e*) See Dan. Pr. 880—881; Ord. XXIII. 25. For orders in like case, see *Attorney-General* v. *Sydney Sussex Coll.*, M. R., 14 Dec. 1865, Reg. Lib. A. 2697; *Plant* v. *Daniell*, V. C. J., 5 Nov. 1869, Reg. Lib. B. 2625; and see Seton, 1145, No. 1. The application must be made to the Judge to whose Court the cause is attached: Ord. XXIII. 26; and a conditional order becomes absolute, without further order, unless cause is shown against it within twenty-eight days after service: *ib.* For order absolute, after cause shown against order *nisi*, see *Chapman* v. *Brown*, W. N. (1867), 49, L.JJ. For form of affidavit of service of the conditional order, see *ante*, No. 48. As to the time allowed to enrol a decree or order, see Dan. Pr. 880; Ord. XXIII. 25, 26.

(*g*) See Dan. Pr. 880; Ord. XXIII. 25. For orders in like case, see *Davies* v. *Davies*, V. C. W., 11 Jan. 1864, Reg. Lib. A. 32; *Cresswell* v. *Jackson*, M. R., 16 Mar. 1865, Reg. Lib. A. 462.

890.
The like, after the five years (*h*).

Formal parts of notice of motion to the L. C. or L.JJ. : see ante, No. 55.
on the part of the plaintiff [*Or*, defendant A. B.—*or as may be*], that, notwithstanding (*Continue as in* No. 889, *ante, to the end*).

891.
Caveat against the enrolment of a decree or order (*i*).

In Chancery.
(*Short title, and reference to the record.*)
Enter a *caveat* against enrolling the decree [*Or*, order] made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], dated the —— day of ——, 187—.
Dated this —— day of ——, 187—.
(*Name, &c., of solicitor or party applying : see ante*, No. 4, *or* 7.)

892.
Notice, by Record and Writ Clerk, to prosecute *caveat* entered with him (*k*).

Record and Writ Clerks' Office,
Chancery Lane,
Sir, ——, 187—.
(*Short title.*)
I beg to give you notice, that the docket of enrolment of the decree [*Or*, order] made in this cause, dated ——, 187—, against the enrolment whereof you have entered a *caveat*, has been left with me ; and unless such *caveat* shall be prosecuted with effect within twenty-eight days from this date, the said docket will, immediately after the expiration of the said twenty-eight days, be presented to be signed, as if no such *caveat* had been entered.
I am, your obedient servant,
X. Y., Clerk of Records and Writs.

893.
Docket of enrolment of decree made

Whereas heretofore, that is to say, in or as of —— term in the year of our Lord 187—, A. B. (*&c.: Set out the names of all the*

(*h*) See Dan. Pr. 881 ; Ord. XXIII. 28.

(*i*) See Dan. Pr. 884 ; Braithwaite's Pr. 526. As to *caveats*, see Dan. Pr. 884, 885. If the decree or order was made by a Vice-Chancellor, the *caveat* is entered in the Record and Writ Clerks' office : *ib.* 884 ; and a fee of 5*s.* is payable thereon, by a fee fund stamp impressed on, or affixed to, the *caveat* : Regul. to Ord. Sched. 4 ; *post*, Chap. XXXI. If the decree or order was made by the Master of the Rolls, the *caveat* is entered with his secretary : Dan. Pr. 884. No fee is payable, in the latter case : Braithwaite's Pr. 527.

(*k*) See Dan. Pr. 885 ; Braithwaite's Pr. 527. A memorandum of the date of transmission of the notice is made on the docket ; thus : "—— day of ——, 187—. Notice to prosecute *caveat* sent to Mr. ——" : *ib.*

at the hearing on bill and answer, or after replication filed, or on motion for decree (*l*).

plaintiffs) exhibited his [*Or*, their] bill of complaint in the High and Honourable Court of Chancery,

If the bill was amended, add (*m*): which said bill was afterwards amended, pursuant to an order of the said Court bearing date the —— day of ——, 187—,

Or, if amended several times, say: pursuant to —— several orders of the said Court bearing date respectively the —— day of ——, 187—, *&c.*,

and, as so amended, was

If amended by adding or striking out the name of a plaintiff, add: by (*Set out the names of the plaintiffs, as they appeared in the bill as amended*), plaintiffs,

against (*Set out the names of all the defendants*), defendants thereto: thereby praying that (*Recite the whole of the prayer* (*n*)):

And whereas the said defendants were duly served with copies of the said bill, and appeared thereto:

If an appearance for some defendants was entered by the plaintiff, add, after bill: and the said defendants (*Name those*

(*l*) See Braithwaite's Pr. 452, *et seq.* For the practice as to the preparation and completion of a docket of enrolment, see Dan. Pr. 882, *et seq.* As to the form and contents of the docket, see *ib.*; Ord. XXIII. 24. The docket must be written on brief paper; and a fee fund stamp of £3, for examining and signing the enrolment, must be impressed on, or affixed to, the first sheet: Dan. Pr. 883; Regul. to Ord. Sched. 4; *post*, Chap. XXXI. The docket, after signature, is engrossed on parchment rolls: consisting of long slips of parchment about eight inches wide, affixed to each other in one continuous roll: under the direction of the Clerk of Records and Writs; and the roll and docket are transmitted by him to the Public Record office: Ord. 7 May, 1866; Dan. Pr. 884. The roll is indorsed, in the open part, with the short title of the cause, the word "order," or "decree" (as the case may be), and the name of the solicitor or party enrolling it: *ib.* For forms of dockets of enrolment of decrees and orders in a suit by claim, or where the original bill was filed before Michaelmas Term, 1852, see Braithwaite's Pr. 460, 461, 466; and of the Court of Chancery, or Landed Estates Court, in Ireland, see *post*, Nos. 1029, 1036. As to altering enrolled decrees or orders, see Ord. XXXI. 9; Dan. Pr. 891.

(*m*) The statement of the amendment of a bill should always be introduced at this place, whatever may be the date of the amendment: Braithwaite's Pr. 454, n. (*b*).

(*n*) In reciting the prayer, substitute: "the said Court," "the said suit," and "the said cause," for the expressions: "this honourable Court," "this suit," and "this cause," respectively; and upon the first occurrence in the prayer of the word "said," in reference to a person or thing not previously mentioned in the docket—*e. g.*: "the said testator Robert Williams," "the said John Smith," "that the said estate may be sold," "that the said sum of £10,000 may be invested"—vary the expression, as thus: "Robert Williams, the testator in the said bill named," "John Smith in the said bill named," "that the estate, in the said bill mentioned, might be sold," "that the sum of £10,000, in the said bill mentioned, might be invested": Braithwaite's Pr. 452, n. (*c*).

who appeared) appeared thereto, and an appearance at the instance of the plaintiff was duly entered thereto for the defendants (*Name them—and if entered pursuant to an order, add:*

pursuant to an order of the said Court, bearing date the —— day of ——, 187—):

If a special appearance was entered by any defendant, say: And whereas the said defendants (*Name all who were served and appeared*) were duly served with copies of the said bill, and appeared thereto; and the said defendant (*Insert his name*) was also duly served with a copy of the said bill, as appears by the memorandum of such service hereinafter mentioned; and he entered a special appearance thereto in the form prescribed by the General Orders of the said Court in that case made and provided:

If a voluntary answer was filed, insert here: And whereas the said defendant (*Insert name*) put in a voluntary answer to the said bill:

If interrogatories were filed, insert here: And whereas on the —— day of ——, 187—, the said plaintiffs filed interrogatories for the examination of the said defendants (*Insert names, if not all*), in answer to the said bill:

If the interrogatories were amended, add: which said interrogatories were duly amended, pursuant to an order of the said Court bearing date the —— day of ——, 187—:

Or, if interrogatories were filed both to the original and to the amended bill, continue, after in answer, *thus:* to the original bill, and on the —— day of ——, 187—, the said plaintiffs filed interrogatories for the examination of the said defendants in answer to the amended bill:

to which said bill and interrogatories the said defendants put in their answers:

If all the defendants did not file answers, vary the statement accordingly.

Or, if a demurrer or plea was allowed by the Court (*o*), *say:* to which said bill and interrogatories the said defendants (*Name those who answered*) put in their answers, and the said defendants (*Name those who demurred, or pleaded*) duly filed a demurrer [*Or*, plea] to the said bill:

Or, if a traversing note was filed, say: to which said bill and interrogatories the said defendants (*Name those who answered*) put in their answers: And whereas on the —— day of ——, 187—, the said plaintiffs filed a traversing note as against the said defendant (*Name*): the last named defendant not having put in any plea or demurrer to the said bill, or any answer to the said interrogatories, within the time limited for that purpose:

(*o*) No reference need be made to any demurrer or plea which was overruled.: Braithwaite's Pr. 456, n. (*a*).

(*p*) And whereas the said plaintiffs replied: whereupon issue was joined with all the said defendants (*q*); and evidence duly taken (*r*):

as in and by the said bill, interrogatories, answers, replication, and evidence [*or as may be*], duly filed and remaining as of record in the said Court, reference being thereunto had, will more fully appear:

If, before the cause came on for hearing, a bill of revivor, or of revivor and supplement, or a supplemental bill, and consequent proceedings were filed and had, or an order to revive, or a supplemental order, was made on motion or petition, insert statements thereof here: For forms, see post, No. 894.

If a memorandum of service of a copy of the bill was entered against any of the defendants, insert here: And whereas by an order of the said Court bearing date the —— day of ——, 187—, it was ordered that a memorandum of service on the defendant (*Name*) of a copy of the plaintiff's bill should be entered in the Record and Writ Clerks' office; and which memorandum was duly entered accordingly:

If an order to take the bill pro confesso was obtained, insert here: And whereas by an order of the said Court bearing date the —— day of ——, 187—, it was ordered that (*Recite the mandatory part of the order*):

If interrogatories for the plaintiff's examination were filed, insert here: And whereas on the —— day of ——, 187—, the said defendant (*Name*) duly filed interrogatories for the examination of the said plaintiff (*Name*): to which said interrogatories was prefixed a concise statement of the subjects on which discovery was sought, and to which said interrogatories and statement the said plaintiff put in his answer:

And whereas *the time for closing the evidence in the said cause duly elapsed; and* (*s*) the said cause being thus ready for hearing, a day was appointed by the said Court for the hearing thereof; and the same coming on accordingly on the —— day of ——, 187—, to be heard and debated (*Recite the whole of the decree: substituting* the said Court—the said suit—the said cause—*for the expressions* this Court—this suit—this cause—*respectively*):

(*p*) If the cause was heard on bill and answer, or on motion for decree, omit this paragraph.

(*q*) If the plaintiff did not join issue with all the defendants, vary the statement accordingly: Braithwaite's Pr. 453, n. (*a*).

(*r*) These words may be used, in whatever form the evidence was taken; but should be omitted if no evidence was taken: Braithwaite's Pr. 458, nn. (*c*), (*e*).

(*s*) If the cause was heard on bill and answer, omit the words in *italics*, If on motion for decree, omit the words in *italics*, and also what follows to "debated," and insert the following: "upon motion made unto the said Court, before his lordship the Master of the Rolls [*or as may be*], on the —— day of ——, 187—, by counsel"

If the decree was made by a Vice-Chancellor, insert here: and which decree has been duly signed by the Lord High Chancellor of Great Britain [*Or*, by the Lords Commissioners for the custody of the Great Seal of Great Britain—*or as may be*], pursuant to the Act of Parliament in that case made and provided (*t*):

It is, therefore, this present day, that is to say, (Monday), the —— day of ——, 187— (*Insert date of decree to be enrolled*), by the Right Honourable (*Insert the name of the holder, or holders, of the Great Seal in office at the time the decree was pronounced* (*u*)), Lord High Chancellor of Great Britain [*Or*, Lords Commissioners for the custody of the Great Seal of Great Britain], and by the High and Honourable Court of Chancery, and the power and authority thereof, ordered and adjudged that (*Recite, in words at length, the whole of the mandatory part of the decree; but substitute:* This Court doth order and adjudge—It is ordered and adjudged—This Court doth adjudge and declare—*for the expressions:* This Court doth order—It is ordered—This Court doth declare—*respectively*). [I have

(*t*) See 53 Geo. III. c. 24, s. 2; 5 Vic. c. 5, s. 22; Braithwaite's Pr. 450, 453, n. (*f*).

(*u*) The following is a list of the titles of all the holders of the Great Seal, since the year 1846, with the dates of their accession to the office :—

The Right Honourable Charles Christopher, Baron Cottenham, of Cottenham, in the county of Cambridge, Lord High Chancellor of Great Britain—6th July, 1846.

The Right Honourable Charles Christopher, Earl of Cottenham, Lord High, &c.—4th June, 1850.

The Right Honourable Henry, Lord Langdale, Sir Launcelot Shadwell, knight, and Sir Robert Monsey Rolfe, knight, Lords Commissioners for the custody of the Great Seal of Great Britain—20th June, 1850.

The Right Honourable Thomas, Baron Truro, of Bowes, in the county of Middlesex, Lord High, &c.—16th July, 1850.

The Right Honourable Sir Edward Burtenshaw Sugden, knight, Lord High, &c.—28th Feb. 1852.

The Right Honourable Edward Burtenshaw, Baron Saint Leonards, of Slaugham, in the county of Sussex, Lord High, &c.—1st March, 1852.

The Right Honourable Robert Monsey, Baron Cranworth, of Cranworth, in the county of Norfolk, Lord High, &c.—29th December, 1852.

The Right Honourable Frederic, Baron Chelmsford, of Chelmsford in the county of Essex, Lord High, &c.—26th Feb. 1858.

The Right Honourable John, Baron Campbell, of Saint Andrews, in the county of Fife, Lord High, &c.—18th June, 1859.

The Right Honourable Richard, Baron Westbury, of Westbury, in the county of Wilts, Lord High, &c.—26th June, 1861.

The Right Honourable Robert Monsey (&c., *as above*)—8th July, 1865.

The Right Honourable Frederic (&c., *as above*)—7th July, 1866.

The Right Honourable Hugh MacCalmont, Lord Cairns, of Garmoyle, in the county of Antrim, Lord High, &c.—29th Feb. 1868.

The Right Honourable William Page, Baron Hatherley, of Down Hatherley, in the county of Gloucester, Lord High, &c.—9th Dec. 1868.

I have inspected this docket, and hereby certify that the statement of the pleadings and decree therein contained is correct.

(*Signature of Record and Writ Clerk.*)

At the request of the plaintiff [*Or*, defendant A.B.—*or as may be* (*x*)].

894.

Statements (in docket) of bill of revivor, or revivor and supplement, supplemental bill, order to revive, supplemental order, and order for leave to attend proceedings (*y*).

1. *Bill of revivor, or revivor and supplement:*
And whereas afterwards, that is to say, in or as of —— term, in the year of our Lord, 187—, (*Set out the names of all the plaintiffs*), plaintiffs, filed their bill of revivor [*Or*, revivor and supplement] in the said Court, against (*Set out the names of the defendants*), defendants thereto: setting forth that (*Set out so much of the statements in the bill as shows the abatement*); and praying that (*Recite the prayer of the bill* (*z*)): And whereas the said defendants were duly served with copies of the said bill, and appeared thereto (*a*):
And whereas by an order of the said Court made in the said cause, and bearing date the —— day of ——187—, it was ordered that (*Recite the mandatory part of the order to revive*):
2. *Supplemental bill:*
And whereas afterwards, that is to say, in or as of —— term, in the year of our Lord, 187—, (*Set out the names of all the plaintiffs*), plaintiffs, filed their supplemental bill of complaint in the said Court, against (*Set out the defendants' names*), defendants thereto: thereby praying that (*Recite the prayer of the bill* (*z*)): And whereas the said defendants were duly served with copies of the said bill, and appeared thereto:
3. *Order to revive, or supplemental order:*
And whereas, upon
If the order was made on motion, continue thus: motion unto the said Court, before the Right Honourable the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], by counsel for the plaintiffs [*or as may be*],
But if the order was made on petition, continue thus: the humble petition of the plaintiffs [*or as may be*], on the

(*x*) As to this certificate, see Ord. XXIII. 24; Dan. Pr. 883.

(*y*) See Braithwaite's Pr. 467, 468, 470. Where the bill of revivor or other document was filed or made before the date of the decree sought to be enrolled, the place at which the statement thereof should be introduced is pointed out in No. 893, *ante*; and where it was filed or made after the date of the decree in the original cause, but before the date of the order to be enrolled, the recital thereof should be introduced in order of date. As to bills of revivor &c, filed before 2nd November, 1852, see Braithwaite's Pr. 467, 468, nn.; and for statement of the filing of a claim to revive, or a supplemental claim, see *ib.* 469.

(*z*) In so doing, observe the directions in *ante*, No. 893, n. (*n*).

(*a*) If a plea or demurrer was filed, add a statement to that effect: see *ante*, No. 893.

—— day of ——, 187—, preferred unto the Right Honourable the Master of the Rolls,

it was alleged (*c*) that (*Recite the allegation, in the order, of the cause of the abatement, &c.*): It was therefore prayed, and the said Court did accordingly order, that (*Recite the mandatory part of the order*):

4. *Order for leave to attend proceedings* (*d*):

And whereas by an order of the said Court made in the said cause, and bearing date the —— day of ——, 187—, upon motion [*Or*, upon petition] of (*State whom*), it was ordered that (*Recite the mandatory part of the order*):

895.

Docket of enrolment of an order made on appeal from a decree (*e*).

Whereas heretofore (*Recite the filing of the bill, as in* No. 893, *ante, and such statements in that Form of the subsequent proceedings, up to and inclusive of the decree appealed against, as are applicable; and continue as follows*):

And whereas the said (*Name of the appellant*) did on the —— day of ——, 187—, prefer his petition of appeal unto the Right Honourable the Lord High Chancellor of Great Britain: setting forth as therein is set forth; and praying that (*Recite the prayer of the petition*):

And whereas by an order bearing date the —— day of ——, 187—, it was ordered that (*Recite the order to set down the appeal*); and the said cause coming on, on the —— day of ——, 187—, to be heard before his lordship [*or as may be*], on the said petition of appeal (*Recite the whole of the decree or order to be enrolled: substituting* the said Court—the said suit—the said cause—*for the expressions* this Court—this suit—this cause—*respectively*):

It is, therefore (*Continue as in* No. 893, *ante, from these words, to the end*).

896.

Docket of enrolment of an order made on a hearing on further consideration (*f*).

Whereas heretofore (*Recite the filing of the bill, as in* No. 893, *ante, and such statements in that Form of the subsequent proceedings, up to and inclusive of the decree, or order, made on the original hearing, as are applicable; and continue as follows*):

(*c*) If the order contains other allegations than those referring to the cause of abatement, say: "it was, amongst other things, alleged,"

(*d*) Where the order was made anterior to the order to be enrolled, this recital should be inserted according to the date of the order to attend; and where the party who has obtained an order to attend desires to enrol the decree made on the original hearing, or an order made anterior to the date of the order to attend, the latter order may be recited immediately before the recital of the decree or order to be enrolled: Braithwaite's Pr. 470, n. (*b*).

(*e*) See Braithwaite's Pr. 476. This form can be readily adapted to an order made on the rehearing of a cause: *ib.* n. (*a*).

(*f*) Braithwaite's Pr. 465. For form of docket of enrolment of an order made on further directions, see *ib.* 464.

And whereas, in pursuance of the said decree [*Or*, order], and of the directions given to him for that purpose, A. B., esquire, one of the Chief Clerks to his lordship the Master of the Rolls [*Or*, to his honour the Vice-Chancellor Sir ——], the Judge to whose Court the said cause was attached [*or as may be*], made his certificate, bearing date the —— day of ——, 187—; and which certificate was signed and approved by the said Judge on the —— day of ——, 187—, and was duly filed on the —— day of ——, 187—:

And whereas the said cause coming on, on the —— day of ——, 187—, for the further consideration thereof adjourned by the said decree [*Or*, order], it was (*Continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

897.

Docket of enrolment of an order of foreclosure absolute (*g*).

Whereas heretofore (*Proceed as in* No. 896, *to the end of the statement of the filing of the Chief Clerk's certificate; and continue as follows*):

And whereas by an order of the said Court, bearing date the —— day of ——, 187— (*Continue as in* No. 893, *ante, from the word* debated, *to the end of that Form; commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

898.

Docket of enrolment of an order made after a decree or order already enrolled in the same cause (*h*).

Whereas by a certain decree [*Or*, order] heretofore signed and enrolled, bearing date the —— day of ——, in the year of our Lord, 187—, made upon the hearing of a certain cause depending in the High and Honourable Court of Chancery, wherein (*Set out all the plaintiffs' names*) were plaintiffs, and (*Set out all the defendants' names*) were defendants, it was adjudged and decreed that (*Recite the adjudication from the previous enrolment, or from the decree or order*):

And whereas (*Set out, concisely, any proceedings leading from the decree or order already enrolled to the order to be enrolled; and continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

(*g*) See Braithwaite's Pr. 464.
(*h*) *Ibid.*, 466.

899.
Docket of enrolment of a decree or order made in original and cross-suits, or other suits heard together, or consolidated after decree, but before the order to be enrolled (*i*).

Whereas heretofore (*Recite the pleadings, &c., in the original or first cause; and then the pleadings, &c., in the cross or second cause: adapting such of the preceding forms as may be applicable to the particular case; and continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the decree, in both suits, to be enrolled. If, however, the suits were consolidated after decree made in one of them, recite the pleadings, &c., in the cause first mentioned in the title of the decree or order to be enrolled; then the pleadings, &c., in the cause secondly mentioned therein; then the proceedings in the joint causes, up to that decree or order; and continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of such decree or order*).

900.
Docket of enrolment of an order made on the hearing of a demurrer (*k*).

Whereas heretofore (*Recite the filing of the bill, &c., up to, and inclusive of, the appearance of the defendants: see ante,* No. 893; *and continue thus*):

And whereas the said defendant A. B. filed a demurrer to the said bill: as in and by the said bill and demurrer, duly filed and remaining as of record in the said Court, reference being thereto had, will more fully appear:

And whereas (*Recite the order to set down the demurrer*):

And whereas the matter of the said demurrer coming on to be argued (*Continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

901.
Docket of enrolment of an order on the hearing of an administration summons (*l*).

Whereas heretofore, that is to say, on the —— day of ——, in the year of our Lord, 187—, (*Set out the names of all the plaintiffs*), obtained a summons from the Right Honourable the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], at his Chambers: a duplicate whereof was duly filed as of record in the High and Honourable Court of Chancery on the —— day of ——, 187—, pursuant to the Act of Parliament, and the General Orders of the said Court, in that case made and provided; and which said summons was intituled "In the matter of (*Set out the full title*)"; and required the said (*Set out the names of the defendants, and the character in which they are sued: as in the body of the summons*), to attend and show cause why an order for the administration of the real and personal estate [*or as may be*] of the said [*Name of deceased*] by the said Court should not be granted: as in and by the said duplicate summons, duly filed,

(*i*) See Braithwaite's Pr. 465.

(*k*) *Ibid.*, 475.

(*l*) *Ibid.*, 463. This form can be readily adapted to an order made on any other originating summons: *ib.* n. (*a*). For form of docket of enrolment of an order on an ordinary summons, see *post*, No. 904.

and remaining as of record in the said Court, reference being thereunto had, will appear:

And whereas the said (*Defendants' names*) were duly served with the said summons, and appeared thereto:

And whereas the said summons came on for hearing on the —— day of ——, 187—; and by an order then made by the said Court upon the said application, and upon hearing (*Continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

902.

Docket of enrolment of an order made on petition (*m*).

1. *Where a recital of previous proceedings is not required* (*n*): Whereas heretofore, that is to say, on the —— day of ——, in the year of our Lord, 187—, A. B. preferred his petition unto the High and Honourable Court of Chancery, before the Lord High Chancellor of Great Britain [*or as may be*], in a certain cause depending in the said Court wherein (*Set out the names of all the plaintiffs*) are plaintiffs, and (*Set out the names of all the defendants*) are defendants:

   Or, in a certain matter intituled (*Set out the title of the matter, as in the order*):

   setting forth as therein set forth, and praying that (*Recite the prayer of the petition* (*o*)): And whereas (*Continue as in* No. 893, *ante, from the word* debated, *to the end of that Form: commencing with a recital of the order to be enrolled; and substituting* order, *for* decree).

2. *Where a recital of previous proceedings is required* (*n*): Whereas heretofore (*Recite the leading proceedings in the cause or matter, up to the date of the order to be enrolled: using such of the preceding forms as may be applicable to the particular case; and continue thus*): And whereas by an order of the said Court bearing date the —— day of ——, 187—, made in the said cause [*Or*, matter] by the said Lord High Chancellor [*or as may be*], upon (*Continue as in* No. 893, *ante, as above directed*).

(*m*) See Braithwaite's Pr. 472.

(*n*) The form of the docket of enrolment made upon an interlocutory application by motion, petition, or summons, depends upon the nature and effect of the order made. Generally speaking, where the order does not affect any decision of the Court upon the merits of the cause, a recital of the pleadings or other previous proceedings is not required; but where the order does so affect, or where the petition, on which the order was made, came on with the cause, either at its original hearing, or on further consideration, a recital of the pleadings or other proceedings leading up to the order to be enrolled is necessary. Ordinarily, the circumstance that the person seeking enrolment is not a party to the cause in which the order was made, will not render a recital necessary of the proceedings: see Braithwaite's Pr. 471.

(*o*) In so doing, observe the directions in *ante*, No. 893, n. (*n*).

903.
Docket of enrolment of an order made on motion (*q*).

1. *Where a recital of previous proceedings is not required* (*r*) : Whereas, upon motion made unto the High and Honourable Court of Chancery, before the Lord High Chancellor [*or as may be*], on the —— day of ——, in the year of our Lord 187—, by counsel for the plaintiff [*or as may be : as in the order*], in a certain cause depending (*&c. : as in* No. 902, *ante*) : and upon hearing (*Continue as in* No. 893, *ante, as directed in* No. 902).
2. *Where a recital of previous proceedings is required* (*r*) : Whereas heretofore (*Recite the leading proceedings in the cause or matter, up to the date of the order to be enrolled : using such of the preceding forms as may be applicable to the particular case ; and continue thus*) : And whereas upon motion made unto the said Court, before the Right Honourable the Master of the Rolls [*or as may be*], on the —— day of ——, 187—, by counsel for (*Continue as in* No. 893, *ante, as directed in* No. 902).

904.
Docket of enrolment of an order made on an ordinary summons (*s*).

1. *Where a recital of previous proceedings is not required* (*r*) : Whereas, upon application made unto the High and Honourable Court of Chancery, before the Right Honourable the Master of the Rolls [*or as may be*], at Chambers, on the —— day of ——, in the year of our Lord 187—, by (*State whom, as in the order*), in a certain cause depending (*&c. : as in* No. 902, *ante*) ; and upon hearing (*Continue as in* No. 893, *ante, as directed in* No. 902).
2. *Where a recital of the previous proceedings may be required* (*r*) : Whereas heretofore (*Recite the leading proceedings, up to the date of the order to be enrolled : using such of the preceding forms as may be applicable to the particular case ; and continue thus*) : And whereas, upon application made unto the said Court, before the Right Honourable the Master of the Rolls [*or as may be*], at Chambers, on the —— day of ——, in the year of our Lord 187—, by (*State whom, as in the order*) ; and upon hearing (*Continue as in* No. 893, *ante, as directed in* No. 902).

(*q*) See Braithwaite's Pr. 473.

(*r*) See *ante*, No. 902, n. (*n*).

(*s*) See Braithwaite's Pr. 474. For form of docket to enrol an order made on an administration or other originating summons, see *ante*, No. 901.

905.

Docket of enrolment of a decree or order, on the hearing of a special case (*u*).

Whereas heretofore, that is to say, in or as of —— term in the year of our Lord 187— (*Set out the names of all the plaintiffs*), as plaintiffs, and (*Set out the names of all the defendants*), as defendants, filed a special case in the High and Honourable Court of Chancery, in pursuance of an Act of Parliament made and passed in the 13th and 14th years of the reign of Her present Majesty, chapter 35, intituled "An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England," for the opinion of the said Court upon the following questions; namely: (*Recite the questions submitted* (*x*)); and which said case was signed by A. B., esquire, as counsel for the said plaintiffs, and by C. D., esquire, as counsel for the said defendants: as in and by the said special case duly filed, reference being thereunto had, will appear:

If an infant, married woman, or person of unsound mind is a party, and an order has been made appointing a special guardian, for the purpose of concurring on his or her behalf in the case, continue thus: And whereas by an order of the said Court, bearing date the —— day of ——, 187—, it was ordered that (*Recite the mandatory part of such order*):

And whereas all the said defendants to the said special case appeared thereto:

If an order for leave to set down the special case was obtained, continue thus: And whereas by an order of the said Court, bearing date the —— day of ——, 187—, it was ordered that the said plaintiffs should be at liberty to set down the said special case for hearing:

And whereas the said special case being thus ready for hearing, a day was appointed by the said Court for the hearing thereof; and the said special case coming on accordingly on the —— day of ——, 187—, to be argued before the said Court in the presence of (*Recite the whole of the decree or order; and continue from thence as in* No. 893, *ante, to the end*).

906.

Notice of motion to vacate an enrolment (*y*).

Formal parts of notice of motion to the L. C., or L.JJ.: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the enrolment of the decree [*Or*, order] made in this cause [*Or*, matter] by the Lord High Chancellor [*or as may be*], and bearing date the —— day of ——, 187—, may be vacated.

(*u*) See Braithwaite's Pr. 462.

(*x*) In so doing, observe the directions stated *ante*, No. 893, n. (*n*).

(*y*) See Dan. Pr. 886. For the grounds on which an enrolment of a decree or order will be vacated, see *ib.* 886—888. For order directing the enrolment of certain indentures to be vacated, see *Butler* v. *Butler*, L. C., 15 June, 1870, Reg. Lib. A. 1841.

Section V.—Rectifying Decrees and Orders (*z*).

907.
Notice of motion, or summons, to rectify a decree or order (*a*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the decree [*Or,* order] made in this cause by his lordship the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—, may be rectified or corrected in the respect following; namely: (*State what*).

908.
Special petition, for the like (*a*).

Title—and address: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. By the decree [*Or,* By an order] made in this cause by your lordship [*or as may be*], dated the —— day of ——, 187—, it was decreed (*&c.: Set out so much of the decree or order as is material to the subject matter of the petition*).

2. The said decree [*Or,* order] has been duly entered in the Registrars' book.

3. Since such entry was made, your petitioner has discovered that the said decree [*Or,* order] omits to (*State omission required to be rectified*).

Your petitioner therefore humbly prays, that the said decree [*Or,* order] may be rectified or corrected by (*State in what respect*):

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante,* No. 58).

(*z*) For the practice as to rectifying decrees and orders, on petition, motion, or summons, see Dan. Pr. 888—891; Ord. XXIII. 21. As to when the application may be made by summons, see Dan. Pr. 889, n. (*r*); as to altering an enrolled decree or order, see *ib.* 891; Ord. XXXI. 9; and as to obtaining an order for additional accounts and inquiries, see Dan. Pr. 890; Ord. XXXV. 19; and *post,* Chap. XXIX.

(*a*) See Dan. Pr. 889.

Section VI.—Registration, etc., of Decrees and Orders under the Acts relating to Judgments (*b*).

909. Memorandum for the registry, or re-registry, of a decree or order (*f*).

Filed (*c*) the —— day of ——, 187—, by A. B., of (*Place of business*), Plaintiff's solicitor [*or as may be*].	DECREE OR ORDER. A (*d*) decree [*Or*, An order] of the High Court of Chancery dated the —— day of ——, 187—. (*e*) TITLE OF THE CAUSE, OR MATTER, IN WHICH THE SAME HAS BEEN OBTAINED. John Jones *v.* Edward James Brown.

NAME, ETC., OF THE PERSON WHOSE ESTATE IS INTENDED TO BE AFFECTED.

Surname.	Christian name or names.	Usual or last known place of abode.	Title, trade, or profession.
Brown	Edward James	No. 800, Oxford Street, in the county of Middlesex.	Linen-draper.

ACCOUNT OF THE DEBT, DAMAGES, COSTS, OR MONIES THEREBY RECOVERED, OR ORDERED TO BE PAID.

Account of debt [*or as may be*] . . £
Account of costs . . . . . £

(*b*) As to the Judgment Acts, and the registration, operation, and enforcement of decrees and orders thereunder, see Dan. Pr. 891, *et seq.*; 1 & 2 Vic. c. 110, ss. 13—19; 2 & 3 Vic. c. 11, ss. 1—6; 3 & 4 Vic. c. 82, ss. 1, 2; 18 & 19 Vic. c. 15; 23 & 24 Vic. c. 38, ss. 1—5; 27 & 28 Vic. c. 112, and Report of Select Committee of House of Commons (1864, No. 396) on the bill for that Act; Sugd. V. & P. 516, *et seq.*, 851; Shelford, R. P. Acts, 565—615; 1 Prideaux, Conv. 130, *et seq.*, 703; 1 Dart, 419, *et seq.*, 1206. As to *lis pendens*, see *ante*, Nos. 214—218, and notes thereto.

(*c*) If for re-registry, say, "Filed for re-entry"

(*d*) If for re-registry, say, "A re-entry of a decree [*Or*, "an order"]"

(*e*) If for re-registry, add here, "Entered before on the —— day of ——, 187—."

(*f*) See Dan. Pr. 895; Pask's Pr. 12. The memorandum must be on parchment; and a separate memorandum is required for every defendant, or

910. Memorandum for the registry of a writ of execution, pursuant to 27 & 28 Vic. c. 112 (*g*).

NAME OF THE DEBTOR.		
Surname.	Christian name or names.	Writ of *elegit* [*or as may be*]: Filed for registration on the —— day of ——, 187—.
Brown.	Edward James.	
PLACE OF ABODE, AND TITLE, TRADE, OR PROFESSION.		
No. 800, Oxford Street, in the county of Middlesex, Linen-draper.		

In the High Court of Chancery.

John Jones, Plaintiff.

v.

Edward James Brown, Defendant.

The decree [*Or*, order] on which the writ of *elegit* [*or as may be*] was issued is dated the —— day of ——, 187—.

Debt, £——.

Costs, £——.

Thomas Styles, of (*Place of business*):

Attorney for the plaintiff John Jones.

911. Acknowledgment of satisfaction of a registered decree or order, or writ of execution (*h*).

Satisfaction is acknowledged between A. B. and C. D., as to a decree [*Or*, order] of the High Court of Chancery dated the —— day of ——, 187—, in a cause wherein the said A. B. is plaintiff, and the said C. D. is defendant,

Or, in a matter intituled, In the matter of, &c.—*or as may be*,

other person, whose estate is intended to be affected: *ib.* A fee of 5*s.* is payable for every original entry, and of 1*s.* for every re-entry: 1 & 2 Vic. c. 110, s. 19; 2 & 3 Vic. c. 11, s. 4. The fee for a search is 1*s.*: 1 & 2 Vic. c. 110, s. 19; 18 & 19 Vic. c. 15, s. 13; 23 & 24 Vic. c. 38, s. 2.

(*g*) See Dan. Pr. 895; Pask's Pr., Sup. 3, *et seq.*; 63, *et seq.*; 23 & 24 Vic. c. 38, ss. 1, 2, 5; 27 & 28 Vic. c. 112, s. 3. The memorandum must be on parchment. The fee for the registration of a writ of execution is 5*s.*: 23 & 24 Vic. c. 38, s. 2.

(*h*) See Dan. Pr. 895; 23 & 24 Vic. c. 115, s. 2. The acknowledgment must be on parchment. As to the persons to sign the acknowledgment, and the attestation thereof, and as to the fee payable, see *ante*, No. 215, n. (*a*). For order, on summons, to enter satisfaction of an order registered in the Middlesex Registry, see *Re Royal British Bank*, V. C. S. at Chambers, for V. C. K., 22 Aug. 1866, Reg. Lib. B. 2047 (by consent).

for the sum of £—— : a memorandum of which said decree [*Or*, order] was left with the Senior Master of the Court of Common Pleas at Westminster on the —— day of ——, 187—, to affect the estate of the said C. D. [*or as may be*].

If so : and on the writ of execution thereon, dated the —— day of ——, 187— : a memorandum of which was left with the said Master on the —— day of ——, 187—.

And I the said A. B. (*Continue as in* No. 215, *ante, to the end of that Form*).

912.

Petition of course, for the entry of satisfaction thereof (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*Or*, defendant A. B.—*or as may be*].

Showeth as follows:

1. By a decree [*Or*, an order] made in this cause [*Or*, matter] by your lordship [*or as may be*], dated the —— day of ——, 187—, it was (amongst other things) ordered that (*Recite, concisely, so much of the decree or order as relates to the subject matter of the entry on the register; as thus :*

the defendant A. B. should pay to your petitioner the sum of £500, by the time thereby limited, and also your petitioner's costs of this suit ; and which costs were afterwards taxed by the Taxing Master at the sum of £80).

2. On the —— day of ——, 187—, a memorandum of the said decree [*Or*, order] was filed with the Senior Master of the Court of Common Pleas at Westminster, for entry, pursuant to the statutes in this behalf, so as to affect the estate of the said defendant [*Or*, your petitioner] : who was described in such memorandum as (*Insert name, and place of abode, &c.*).

If so : and on the —— day of ——, 187—, a like memorandum was filed with the said Senior Master for re-entry pursuant to the said statutes.

If so : and on the —— day of ——, 187—, a memorandum of a writ of execution of the said decree [*Or*, order] was left with the said Senior Master, for entry, pursuant to the statutes in this behalf.

3. The purposes for which the said decree [*Or*, order]

If so : and writ of execution

was [*Or*, were] registered as aforesaid have been satisfied, and your petitioner is desirous that the aforesaid entry thereof should be discharged.

Your petitioner therefore humbly prays, that the

(*i*) See Dan. Pr. 895. For order in like case, see Pask's Pr. 123. The practice of getting the entry of a decree or order, or writ of execution, satisfied under an order obtained on petition of course, is still frequently resorted to, notwithstanding the 23 & 24 Vic. c. 115, s. 2; and see Pask's Pr. Sup. 30, n. (*l*), ed. 3.

proper officer may be at liberty to enter satisfaction in respect of the said decree [*Or*, order],

If so : and writ of execution,

so registered as aforesaid, in the books kept by him for that purpose (*k*).

And your petitioner will ever pray, &c.

913.

Petition, under 27 & 28 Vic. c. 112, for sale of lands delivered in execution, under an *elegit* (*l*).

In Chancery.

Master of the Rolls.

In the Matter of an Act passed in the Session held in the 27th and 28th years of the reign of Her present Majesty, entitled "An Act to amend the law relating to future judgments, statutes, and recognizances."

And in the Matter of W. K.

Ex parte the Official Liquidator of the L. B. Company.

To the Right Honourable the Master of the Rolls.

The humble petition of W. T., of, &c., the Official Liquidator of the L. B. Company.

Showeth as follows:

[1—9. After statements showing the formation of the Company —that W. K. was the holder of certain shares therein—that the Company had, by order dated the 13th of October, 1864, been ordered to be wound up, under "The Companies Act, 1862"—that W. K. had been settled on the list of contributories, in respect of the said shares—that two orders for calls had been made—that by another order, dated the 11th of January, 1866, W. K. had been ordered to pay to the petitioner £2120, due from him in respect of such calls—and that he had been served with such order, but had not paid such sum, or any part thereof—the petition proceeded as follows:—]

10. At the time when the said order of the 11th of January, 1866, was made the said W. K. was seized of, and entitled to, certain lands and hereditaments in the county of Y.; that is to say: he was absolutely entitled to the fee simple and inheritance of certain messuages and lands, containing 224 acres, called by the name of O. Farm, situate in the parish of T., in remainder expectant upon the death of W. K. G., and failure of his issue male; and he was entitled in possession to the fee simple and inheritance of a close of land containing 2 a. 3 r. 0 p., situate in the parish of S.

(*k*) Where the petition is presented by the person whose estate is affected by the registry, the consent of the solicitor of the person who registered the decree, &c., must be obtained to the prayer. For form of consent, see *ante*, No. 59.

(*l*) *Re Kirby* (Presented 28 May, 1866); and see 27 & 28 Vic. c. 112, s. 4; Dan. Pr. 897, 898. For the order made on the petition, see *post*, No. 914.

11. Under the circumstances aforesaid, on the 3rd of March, 1866, your petitioner, being desirous of enforcing payment of the last mentioned sum, sued out a writ of *elegit*, directed to the sheriff of Y. (*m*), to enforce payment of the sum which the said order of the 11th of January, 1866, directed to be paid.

12. In pursuance of the said writ, the sheriff of the county of Y. duly caused an inquisition to be made as to the goods and chattels, lands, tenements, and hereditaments, in the county of Y, of which the said W. K. was seized or possessed on the 11th of January, 1866, or at any time after that day; and by the said inquisition it was found that the said W. K. was seized of, and entitled to, the before mentioned lands and hereditaments, for the estate, and in manner, hereinbefore also mentioned; and that the said farm in the parish of T. was of the value of £370 a year, and the said close in the parish of S. was of the value of £5 10*s.* a year; and the said sheriff caused the said lands and hereditaments to be delivered in execution to your petitioner, as Official Liquidator of the said L. B. Company: subject, as to the said lands and hereditaments in the parish of T., to the estate therein of the said W. K. G., and his issue male. The return of the said Sheriff to the said writ has been duly made, and filed in this Court.

13. No part of the said sum of £2120 has ever been paid, or satisfied; and the last mentioned sum, with interest thereon from the 11th of January, 1866, is due to your petitioner, as such Official Liquidator as aforesaid.

14. The said order of the 11th of January, 1866, has been duly registered in the Court of Common Pleas at Westminster, and at Wakefield in the county of York. The said writ of *elegit* has also been registered at Wakefield aforesaid; and on the 18th of May, 1866, was duly registered in the Court of Common Pleas at Westminster, in manner required by the above mentioned Act.

[15. And after statements to the effect that W. K. was entitled to the said hereditaments, or part thereof, under the will of R. K.—that R. K. was a holder of shares in the said Company, and that W. K., as his executor, had been settled on the list in respect thereof—that calls made in respect of such shares remained unpaid—and that the petitioner had instituted a suit for the administration of R. K.'s estate—the petition concluded as follows:—]

16. The estate and interest of the said W. K. of and in the said lands and hereditaments, to which he is entitled under the will of the said R. K., is subject to the claims of your petitioner in the said suit.

Your petitioner therefore humbly prays your lordship, that the interest of the said W. K. of and in the said lands and hereditaments in the respective parishes of T. and S., in the county of Y., which

(*m*) As to the writ of *elegit*, see *post*, No. 982, *et seq.*, and notes thereto.

have been delivered in execution to your petitioner as aforesaid, may be sold; and that the money arising from such sale may be applied in paying to your petitioner what is due to him under the said order of the 11th of January, 1866; Or, if there are any other charges on the interest of the said W. K. in the said lands and hereditaments, that the proceeds of the said sale may be applied in payment of what is due to the parties entitled to charges on such interest, according to their respective priorities.

And that for effectuating the purposes aforesaid, all proper and necessary accounts may be taken, directions given, and inquiries made.

Or, that your lordship will make such further or other order in the premises, as to your lordship shall seem meet.

And your petitioner will ever pray, &c.

Note: It is intended to serve this petition on the said W. K.

914.

Order for inquiries thereon (*n*).

Date, and title, and other formal parts.

His lordship doth order that the following inquiries be made, namely:—

1. An inquiry of what the lands and hereditaments in the respective parishes of T. and S., in the county of Y., which have been delivered in execution to the petitioner, as in the petition mentioned, consist.

2. An inquiry what is the interest of the respondent W. K. therein.

3. An inquiry whether any other of the creditors of the said W. K. is entitled to any judgment, statute, or recognizance which is a charge on the interest of the said W. K. in the said lands.

And the further hearing of the said petition is adjourned, until after the Chief Clerk shall have made his certificate (*o*).

915.

Petition, under 27 & 28 Vic. c. 112, for sale of lands taken under a writ of sequestration (*p*).

Court, and title of the Act, as in No. 913, *ante.*

In the matter of J. R. R., one of the solicitors of this honourable Court.

To the Right Honourable the Master of the Rolls.

The humble petition of G. C. S. D., of, *&c.*, and H. G., of, *&c.*

(*n*) *Re Kirby*, M. R. 23 June, 1866, Reg. Lib. A. 1413. As to the form of order, under 27 & 28 Vic. c. 112, s. 4, see Dan. Pr. 897, 898, and cases there cited.

(*o*) The Chief Clerk's certificate of the result of the inquiries was filed on the 6th Dec. 1866.

(*p*) *Re Rush* (Presented 11 June, 1870); Dan. Pr. 898, 917. For the order made on the petition, see *post*, No. 916.

Showeth as follows:

[1—2. After statements showing that the common order, dated 14th January, 1869, had been made for delivery by J. R. R. of his bill of costs against the petitioner G. C. S. D., and for taxation thereof, and payment of the balance due; and that the Taxing Master had by his certificate thereunder, dated and filed 7th December, 1869, certified a balance to be due from J. R. R. to the same petitioner: the petition proceeded as follows:—]

3. The hereinbefore stated order, and the certificate made thereon, have been duly registered in the Court of Common Pleas at Westminster, pursuant to the statute 1 & 2 Vic. c. 110, and all other statutory provisions in that behalf; and the said order was also duly registered in the registry kept for the County of Middlesex on the 4th of January, 1870.

[4—5. And after statements of an order dated the 22nd January, 1870, directing a sequestration to issue against the property of J. R. R., until payment of the said balance; and of the writ of sequestration issued in pursuance thereof: the petition proceeded as follows:—]

6. The said writ was, on the 29th of January, 1870, duly registered in the Court of Common Pleas at Westminster, pursuant to the third section of the statute 27 & 28 Vic. c. 112, and to all other statutory provisions in that behalf; and the same was also, on the 8th of February, 1870, duly registered in the said registry for the County of Middlesex.

7. The said sequestrators accordingly proceeded under the said writ, and took divers chattels and personal estate of the said J. R. R.; and under an order of this honourable Court, made on the 11th of February, 1870 (*pp*), the said sequestrators have sold the said chattels, and have applied the proceeds of such sale, after deducting the expenses thereof, as directed by the said order. The said sequestrators have also received divers moneys in respect of rents, issues, and profits of the freehold and leasehold estates of the said J. R. R.: for which they are desirous to account.

[8—14. And after statements of certain voluntary conveyances executed by J. R. R. of parts of his real estate, and of a mortgage security, and reversionary interest, previously to the issuing of the writ; and that, pursuant to an order made in the matter, such property had since, by indentures, been conveyed and assigned to the petitioner H. G., in trust for the petitioner G. C. S. D., as a judgment creditor: the petition proceeded as follows:—]

15. The several tenants of the said hereditaments comprised in the said indentures have been applied to and have all attorned, and now pay rent, to the said sequestrators: who are in actual possession of the said hereditaments under and by virtue of the said writ of sequestration; and your petitioner H. G. is ready

(*pp*) See *post*, No. 956.

and willing to act in the matter of the sale and conveyance of the legal estate of the said hereditaments, pursuant to any order which your lordship may please to make upon this petition.

[16—17. And after specifying certain other hereditaments of J. R. R.; and that the tenants thereof had attorned to the sequestrators: who, by virtue of the sequestration, were then in the actual possession thereof: the petition concluded as follows:—]

18. No part of the said debt or sum of £—— (*balance certified by the Taxing Master*) has been paid or satisfied: save such monies, amounting to £——, or thereabouts, as were paid to your petitioner G. C. S. D. under the said order for sale of the said furniture; and the whole of the said debt, save as last aforesaid, remains due to your petitioner G. C. S. D.

Your petitioners therefore humbly pray your lordship, that the interest of the said J. R. R. in the several hereditaments of which the said sequestrators are in actual possession, as aforesaid, may be sold; and that the money arising from such sale may be applied in reduction of the monies due to your petitioner G. C. S. D., under the order of this honourable Court. Or that, if there are any other charges upon the said hereditaments, within the purview of the said statute 27 & 28 Vic. cap. 112, then that the proceeds of the said sale may be distributed among the persons who may be found entitled thereto, according to their priorities.

And that the said sequestrators may be ordered to pass their accounts; and that the balance found due from them may be applied in reduction of the monies so due to your petitioner G. C. S. D.

And that the said sequestrators may be at liberty to take proper steps to call in and realize the said mortgage security; and also to sell the said reversionary interest and other premises so assigned to your petitioner H. G., in trust for your other petitioner as aforesaid.

Or that your lordship will make such further or other order in the premises as shall be just.

Note: It is intended to serve this petition on the said J. R. R.

916.

Order, for inquiries, and sale, on the above petition, No. 915 (*q*).

Date and title, and other formal parts.

This Court doth order, that the following accounts and inquiries be taken and made, that is to say:

1. An account of what is due to the petitioner G. C. S. D., in respect of the sum of £——, the balance by the Taxing Master's certificate, dated, &c., certified to be due to him from the said

(*q*) *Re Rush*, M. R., 21 June, 1870, Reg. Lib. B. 1709; W. N. (1870), 188, M. R.: Dan. Pr. 898, 917.

J. R. R.: with interest thereon, at the rate of £4 per cent. per annum, from the date of such certificate; and for his subsequent costs of this matter: including the costs of this application, to be taxed by the Taxing Master.

2. An inquiry what lands and property have been taken under or by virtue of the writ of sequestration issued in pursuance of the order dated the 22nd January, 1870, in the petition mentioned; and what are the nature and particulars of the interest of the said J. R. R. in such lands and property, and of his title thereto, and in whom the same are now vested.

3. An inquiry whether there are any, and (if any) what, debt or debts, other than the debt of the petitioner G. C. S. D., due from the said J. R. R., which is or are a charge or charges upon the said lands and property, and what are the priorities of the said petitioner G. C. S. D.'s charge, and such other charges (if any) thereon.

4. An account of what is due in respect of such other charges (if any), and to whom.

5. And it is ordered that the interest of the said J. R. R. in the said lands and property so sequestered as aforesaid, or a sufficient part thereof, be sold with the approbation of the Judge. And it is ordered that the money to arise by such sale be paid into the bank, with the privity of the Accountant General, to the credit of "In the matter of J. R. R.—Proceeds of sale of the lands and property under the writ of sequestration issued pursuant to the order dated 22nd January, 1870." And it is ordered that such money be applied in payment of what shall appear to be due to the petitioner G. C. S. D., and the persons entitled to such other charges (if any) as aforesaid, according to their priorities.

And the petitioner G. C. S. D. and such other persons (if any) are to be at liberty to apply to this Court, or the Judge in Chambers, for payment of the money to arise by such sale, as they may be advised.

917.

Petition for order *nisi*, to charge fund in Court in one cause with debt recovered in another (*r*).

Title (*s*)—*and address to the L. C. or M. R.: see ante*, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

Show the petitioner's title to the debt; as thus: 1. By a decree made by his honour the Vice-Chancellor, Sir ——, in a cause wherein your petitioner is plaintiff, and the above named defendant C. D. is defendant (1870, A. No. 901), and dated the ——

(*r*) The application for a charging order *nisi*, whether by petition or summons, is made *ex parte:* see Dan. Pr. 899, 901. As to service of the orders *nisi* and absolute, see *ib.* For form of affidavit of service, see *ante*, No. 48. As to charging orders, and stop orders in aid, see 1 & 2 Vic. c. 110, s. 14; 3 & 4 Vic. c. 82, s. 1; Shelford's R. P. Acts, 572—575, 601; Dan. Pr. 898—903. For orders under these Acts, see Seton, 954, *et seq.*

(*s*) As to the title, see Dan. Pr. 900.

day of ——, 187—, it was ordered that the defendant C. D. should, on or before the —— day of ——, 187—, pay to your petitioner the sum of £1000, and also his costs of that cause, to be taxed by the Taxing Master; and which costs were afterwards certified by the Taxing Master, by his certificate dated the —— day of ——, 187—, at the sum of £50. The said sums of £1000 and £50, and all interest accrued due in respect thereof, remain due to your petitioner from the defendant C. D.

Show the debtor's title to, or interest in, the fund sought to be charged; as thus: 2. By an order made in this cause by your lordship [*or as may be*], and dated the —— day of ——, 187—, it was ordered that the interest to accrue, during the life of the defendant C. D., on the sum of £5000, bank £3 per cent. annuities, then and now remaining on the credit of this cause, "The account of C. D., and his children," should from time to time, as the same should accrue due, be paid to the defendant C. D., until further order.

Your petitioner therefore humbly prays, that the interest hereafter to accrue, during the life of the defendant C. D., on the said £5000, bank £3 per cent. annuities, may stand charged with the payment to your petitioner of the said sums of £1000, and £50, and of interest thereon at the rate of £4 per cent. per annum from the —— day of ——, 187—, till payment (*t*): unless the defendant C. D. shall, on the —— day of ——, 187— (*u*), show good cause to the contrary.

And that no part of the said bank annuities, or any interest to accrue, during the life of the defendant C. D., in respect thereof, may be sold, transferred, paid out, or otherwise dealt with, without notice to your petitioner, until the order to be made hereon is made absolute or discharged.

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante,* No. 58).

918.

Summons, for the like order *nisi* (*x*).

Title—and other formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), that the interest hereafter to accrue, during the life of the defendant C. D., on the sum of £5000, bank £3 per cent. annuities, remaining on the credit of this cause, "The account of C. D., and his children," may stand charged with the payment to the applicant A. B. of the sums of £1000, and £50, payable to him by the defendant C. D.,

(*t*) As to interest, see 1 & 2 Vic. c. 110, s. 17; Shelford's R. P. Acts, 578, 579; Dan. Pr. 903.

(*u*) As to the time to be limited for showing cause, see Dan. Pr. 901.

(*x*) See notes to No. 917, *ante.*

pursuant to the decree dated the —— day of ——, 187—, and Taxing Master's certificate dated the —— day of ——, 187—, respectively made in a cause wherein the applicant is plaintiff, and the said C. D. is defendant (1870, A. No. 901), and with interest thereon at the rate of (*&c.: Continue as in prayer of* No. 917, *ante, to* discharged : *substituting* the applicant A. B., *for* your petitioner).

919.

Affidavit in support of petition or summons for a charging order *nisi* (*y*).

Formal parts: see ante, No. 9.

1. *Prove the title of the petitioner, or applicant, to the debt; and that it remains due.*

2. *Prove the title of the debtor to, or his interest in, the fund sought to be charged.*

3. *Show means of knowledge.*

920.

Petition for stop order on fund in Court, in aid of a charging order at law (*z*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*). Showeth as follows :

Show debtor's interest in fund in Court; as thus: 1. W. O., the testator in the pleadings of this cause named, bequeathed to trustees the sum of £10,000, reduced annuities, on trust for his daughter H. D., widow, for her life, and at her decease for her children, in equal shares.

2. The said £10,000 reduced annuities is now remaining on the credit of this cause, "The account of H. D., and her children;" and by an order made therein dated the —— day of ——, 187—, the interest to accrue, during the life of the said H. D., on the said fund, is directed to be paid to her.

3. The above named defendant C. D., as one of the three children of the said H. D., is entitled, in reversion expectant on the death of the said H. D., to one third share of the said reduced annuities.

State the charging order obtained at law; as thus: 4. By an order dated the —— day of ——, 187—, made by the honourable Mr. Justice E., in an action then pending in Her Majesty's Court of Queen's Bench at Westminster, wherein your petitioner was plaintiff, and the said defendant C. D. was defendant, it was

(*y*) See Dan. Pr. 901. The application may be supported by documentary evidence. The Accountant General's certificate of fund in Court will also be required.

(*z*) See Dan. Pr. 902; and *ante,* No. 917, n. (*r*). The application must be supported by production of the charging order absolute at law; and by an affidavit, or other evidence, showing the debtor's title to or interest in the fund in Court, and the Accountant General's certificate of the fund being there. For form of affidavit of service of the petition, see *ante,* No. 49. As to stop orders, see also *post,* Chap. XXXVII. Sec. 3.

ordered that the one third share of the defendant C. D., of the said £10,000, reduced annuities, expectant as aforesaid, should stand charged with the payment to your petitioner of the sum of £500 debt, and £60 costs, together with interest on both sums, at the rate of £4 per cent. per annum, from the —— day of ——, 187—.

5. The said sums of £500 and £60, and all interest accrued due in respect thereof, remain due to your petitioner from the defendant C. D.

Your petitioner therefore humbly prays, that, no part of the one third share of the defendant C. D. of the said £10,000, reduced annuities, may henceforth be sold, transferred, or otherwise dealt with, and no part of any interest to accrue in respect of such share, after the death of the said H. D., may be paid out, or otherwise dealt with, without notice to your petitioner.

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante,* No. 58).

921.

Summons for the like stop order (*a*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), that no part of the one third share of the defendant C. D., expectant on the death of his mother H. D., of the sum of £10,000, reduced annuities, remaining on the credit of this cause, "The account of H. D., and her children," may henceforth (*Continue as in prayer of* No. 920, *ante, to* notice; *and add:*) to the applicant A. B.

SECTION VII.—ENFORCING THE EXECUTION OF DECREES AND ORDERS (*b*).

1. *Service of the decree or order* (*c*).

922.

Memorandum to be indorsed on the copy of a decree or order, for service in ordinary cases (*d*).

If you, the within named A. B., neglect to obey this decree [*Or,* order] by the time therein limited, you will be liable to have your property sequestered, for the purpose of compelling you to obey the same decree [*Or,* order]; and you may also be liable to be arrested and committed to prison.

(*a*) See *ante,* No. 920, n. (*z*). For form of affidavit of service of the summons, see *ante,* No. 50.

(*b*) For the practice on this subject, see Dan. Pr. 903—938. For tables of process to enforce decrees and orders, see Seton, 1240, 1241. As to the registration of decrees, orders, and writs of execution, see Dan. Pr. 893—895; and *ante,* Nos. 909, 910. As to the process to enforce payment of costs, see *post,* Chap. XXXI.

(*c*) As to the mode of service, see Dan. Pr. 905.

(*d*) See Ord. XXIII. 10, as varied by Ord. 7 Jan. 1870, r. 1; Dan. Pr. 903,

923.

The like memorandum, for service on a Peer, or M. P. (*e*).

If you, the within named A. B., neglect to obey this decree [*Or*, order] by the time therein limited, you will be liable to have your property sequestered, for the purpose of compelling you to obey the same decree [*Or*, order].

924.

The like, on a corporation aggregate (*e*).

If you, the within named (*Insert name of corporation*), neglect to obey this decree [*Or*, order] by the time therein limited, you will be liable to have your lands and tenements, goods and chattels, distrained upon, and to have your property sequestered, for the purpose of compelling you to obey the same decree [*Or*, order].

925.

Notice of motion, or summons, to enlarge the time limited by a decree or order to obey same (*f*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the time limited by the decree [*Or*, order] dated the —— day of ——, 187—, for the defendant A. B. [*or as may be*] to

(*Describe the act directed to be done by the decree or order; as thus:* pay into the bank, with the privity of the Accountant General, to the credit of this cause, the sum of £1000),

may be enlarged to the —— day of ——, 187—, or —— days after service of the order to be made hereon [*or as may be*]; and that the costs of this application may be costs in the cause [*or as may be*].

926.

The like, to fix a time, where none limited, or limited time expired (*g*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the defendant A. B. [*or as may be*], may be ordered, on or before the —— day of ——, 187—, or subsequently within —— days after service of the order to be made hereon, to (*Describe the act to be done; see ante*, No. 925), pursuant to the decree [*Or*, order] dated the —— day of ——, 187—; and that the costs of this application may be costs in the cause [*or as may be*].

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904. The indorsement is not required, where the service is made to ground a writ of assistance: Dan. Pr. 904, n. (*o*); and see *ib.* 924.

(*e*) See Dan. Pr. 904.

(*f*) *Ibid.*, 904, 906. This form is applicable as well to a case where the applicant is seeking to enforce, as where he is required to obey, the decree or order. As to the endorsement on, and service of, the enlarging order, see Dan. Pr. 904.

(*g*) See Dan. Pr. 904. As to the indorsement on, and service of, the enlarging order, see *ib.*; and as to when the application can be made by summons, see *ib.* n. (*p*).

927.
Motion paper, or summons, for substituted service of a decree or order (*h*).

Formal parts: see ante, No. 53, *or* 60.

on the part of the plaintiff [*or as may be*], that service of the decree [*Or*, order] dated the —— day of ——, 187—, together with a copy of the order to be made hereon, upon

(*Describe the proposed substitute; as thus:* C. D. of (*residence and addition*)—*Or*, C. D., and E. F., members of the firm of D. & F., of (*Place of business and addition*), or upon either of them),

may be deemed good service on the defendant A. B. [*or as may be*].

928.
Affidavit in support (*i*).

Formal parts: see ante, No. 9.

1. *Show what efforts have been made to effect personal service of the decree or order; and why it cannot be effected.*

2. *Show upon what person, or in what way, substituted service is proposed to be made; and the special grounds for selecting such person, &c.*

3. *Show means of knowledge.*

929.
Affidavit of service of decree or order (and Taxing Master's, or Chief Clerk's, certificate) (*k*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served in manner hereinafter mentioned

(*Describe the person served; as thus:* the defendant A. B. *Or*, A. B., the person named in the order, dated the —— day of ——, 187—, hereinafter mentioned),

with the decree [*Or*, order] made in this cause [*Or*, matter] by the Lord High Chancellor [*or as may be*], dated the —— day of ——, 187—, whereby it was (decreed and) ordered that

(*Recite the declaratory and directory parts; and, if more than one decree or order was served, add:* and also with the decree [*Or*, order] made, *&c.*, by, *&c.*, dated, *&c.*, whereby, *&c.* (*as above*).

If on a substitute, add: and also with the order made in this cause dated the —— day of ——, 187—, whereby it was ordered that (*Recite so much of the order for substituted service as directed such service*).

(*h*) See Dan. Pr. 906. For orders in like case, see *Gannon* v. *Gannon*, V. C. K. at Chambers, 21 Mar. 1865, Reg. Lib. A. 557; *Re Rush*, M. R., 18 Dec. 1869, Reg. Lib. B. 3024; and see Seton, 1212. The application in either case is made *ex parte:* Dan. Pr. 906. As to when substituted service will be directed, and when the application can be made by summons, see Dan. Pr. 905, 906. As to substituted service generally, see *ib.* 370, *et seq.*; and *ante*, Nos. 285, 286, and notes thereto; and as to the mode of effecting substituted service, see Dan. Pr. 906.

(*i*) See Dan. Pr. 906.

(*k*) *Ibid.*, 908; and see *ante*, No. 48.

Where the amount to be paid has been ascertained by the Taxing Master's, or Chief Clerk's certificate, subsequently to the order directing payment, add: and also with the certificate of G. H., esquire, one of the Taxing Masters of this Court,

Or, of R. M., esquire, Chief Clerk of his lordship the Master of the Rolls—*Or*, of his honour the Vice-Chancellor Sir ——,

dated the —— day of ——, 187—, whereby the said Taxing Master [*Or*, Chief Clerk] certified that (*Recite sufficient of the certificate to show the amount to be paid*).

2. I served as aforesaid the said decree [*Or*, order—and Taxing Master's—*Or*, Chief Clerk's—certificate—*or as may be*],

by delivering a true copy thereof [*Or*, of each of them]

to, and leaving the same with, the said defendant A. B. [*or as may be*], personally, at (*State where*), in the (county) of —— (*l*); and I at the same time showed to him [*Or*, her] the said original decree [*Or*, order], duly passed and entered.

Or, an office copy of the said decree [*or as may be*], duly sealed with the seal of the Report Office of this honourable Court, and signed by S. C. W., esquire, one of the Clerks of Records and Writs of this Court.

If so: and also an office copy of the said Taxing Master's [*Or*, Chief Clerk's] certificate, duly sealed, *&c.*, and signed, *&c.* (*as last above* (*m*)).

3. The copy [*Or*, each copy] served as aforesaid of the said decree [*Or*, order, *&c.*] had indorsed thereon, at the time of the aforesaid service thereof, a memorandum in the words following, that is to say: (*Set out a copy of the memorandum*).

930.

Affidavit of neglect or refusal to do an act, or make a payment, according to the exigency of a decree or order (*n*).

Formal parts: see ante, No. 9.

1. The above-named defendant A. B.

Or, A. B., in the decree [*Or*, order] made in this cause [*Or*, matter], dated the —— day of ——, 187—, named,

has not, nor has any person on his behalf, (*Describe the default; as thus:* paid to me, or to any person by my order, or for my use, the

(*l*) It seems that an affidavit of personal service of a decree or order need not state the place where the service was effected: *Re Job*, 27 Beav. 27, cited Dan. 908, n. (*y*); but it is usual and desirable to insert it.

(*m*) See Ord. XXXVI. 1, 2.

(*n*) See Dan. Pr. 906, 907; Ord. 7 Jan. 1870, rr. 3, 6, 7. Where the act directed to be done is the payment, transfer, or delivery of money, stock, or other thing to a person out of Court, the default should be proved by his own affidavit; but where the payment, &c., is directed to be made into Court, the default must be proved by the Accountant General's certificate thereof: see Dan. Pr. 908. For form of affidavit of service of the decree or order, see *ante*, No. 929.

sum of £——, by the said decree [*Or*, order] made in this cause [*Or*, matter], dated the —— day of ——, 187—, directed to be paid by him to me, nor any part of such sum. The whole of the said sum of £—— remains due to me from the said (defendant) C. D.).

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2. *Process against Unprivileged Persons* (*o*).

(1) *By Attachment* (*p*).

931.

Motion paper, or summons, for leave to issue attachment for non-payment of money, or costs, by a trustee or solicitor (*q*).

Formal parts: see ante, No. 53, *or* 60.

on the part of the plaintiff [*Or*, defendant A.B.—*or as may be*], that he may be at liberty to issue an attachment or attachments against the defendant A. B. [*Or*, plaintiff C. D.—*or as may be*], for his contempt in

(*Describe the contempt; as thus:* not paying the sum of £—— to the applicant),

pursuant to the decree [*Or*, order], dated the —— day of ——, 187—.

932.

Præcipe for an attachment (*r*).

In Chancery.

D. } (*Reference to the record.*)
v. } Seal an attachment directed to the Sheriff of Anglesey
B. } [*or as may be: see ante*, Nos. 308, 309], against the

(*o*) See Dan. Pr. 903, *et seq.*

(*p*) For the practice as to the preparation, direction, return day, delivery, execution, and return of an attachment, see Dan. Pr. 387, *et seq.*, 908, *et seq.*; and see Ord. 7 Jan. 1870, Dan. Pr. 906, 907, 930; and *ante*, No. 308, *et seq.* For affidavits of service of a decree or order, and that same has not been obeyed, see *ante*, Nos. 929, 930.

(*q*) See Dan. Pr. 907. As to when this application is necessary, see *ib.*; Ord, 7 Jan. 1870, r. 9. The application must be supported by evidence to satisfy the Court or Judge that the case comes within the exceptions contained in the 4th section of the Debtors' Act, 1869 (32 & 33 Vic. c. 62: Dan. Pr. 907, n. (*t*)); and is granted *ex parte*: unless the Court or Judge thinks fit to require notice of the application to be served: *ib.* For orders on *ex parte* motion, see *Manton* v. *Manton*, M. R., 24 Mar. 1870, Reg. Lib. B. 675; *Small* v. *Pratt*, M. R., 2 Aug. 1870, Reg. Lib. B. 2372.

(*r*) See Dan. Pr. 908; Braithwaite's Pr. 168, *et seq.* For attachment against husband, for nonpayment by husband and wife of money into the bank, see *Statham* v. *Storer*, 11 Jan. 1865, Reg. Lib. B. 3; and against a trustee for nonpayment of money since the Debtors' Act, 1869 (32 & 33 Vic. c. 62), on an order made under Ord. 7 Jan. 1870, r. 9, see *Manton* v. *Manton*, 25 Mar. 1870, Reg. Lib. B. 679. The *præcipe* must be made out in duplicate, and entered with the entering clerk in the Registrars' office, before the writ is issued: Dan. Pr. 389, 908. For forms of *præcipe* in particular cases, and the evidence required on the application to seal the writ, see *Index*, ATTACHMENT; and see Braithwaite's Pr. 168, *et seq.*

defendant A. B. [*or as may be*], for breach of a decree [*Or*, an order], dated the —— day of ——, 187—, made in a cause wherein C. D. is plaintiff, and A. B. is defendant,

Or, in a matter intituled, "In the matter of ——" (*&c.: setting out the full title, as in the decree or order*), in not

(*Recite so much of the mandatory part of the decree or order as directs payment of the money or performance of the act, and explains the purpose for which the attachment is to be issued*),

as by the said decree [*Or*, order] the said A. B. was commanded.

(*If issued under a special order, insert here:* Order dated —— day of ——, 187—.)

Returnable ——.

Tested ——day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4 *or* 7.)

933.

The writ (*s*).

The same as No. 313, *ante*.

934.

Indorsement thereon (*s*).

By the Court.

For breach of a decree [*Or*, an order] dated the —— of ——, 187—, made (*&c.: Continue as in* No. 932, *ante*, *to* commanded : *substituting* within named, *for* said).

935.

Common returns by the Sheriff.

Cepi corpus : see *ante*, No. 383, n. (*l*).

Attached and in prison : see *ante*, No. 397, n. (*g*).

Non est inventus : see *ante*, No. 409, n. (*t*).

936.

Return *non est inventus*, to an attachment issued into a county Palatine (*t*).

The answer of A. B. (*Name of the Chancellor of the County Palatine*), Chancellor of the County Palatine of ——, to this writ (*u*). By virtue of this writ to me directed and delivered, by another writ under the seal of the County Palatine of —— within mentioned, and directed to the Sheriff of the said County, I

(*s*) See Dan. Pr. 908; Braithwaite's Pr. 168; and *ante*, No. 313, n. (*d*). For forms of indorsement in particular cases, see *Index*, ATTACHMENT; and see Braithwaite's Pr. 168, *et seq.*

(*t*) *Moxon* v. *Bright* (1867, M. No. 147): attachment sealed 21 July, 1869; return filed 13 Aug. 1869.

(*u*) The return is endorsed on the writ.

commanded the said Sheriff, as within I am commanded: which said Sheriff, to wit, C. D., esquire (*Name of the Sheriff of the county*), in answer to the said writ saith, that the within named E. F. (*Name of the person against whom the attachment issued*) is not found in his bailiwick.

By the same Chancellor.

(*No signature.*)

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937. Motion paper, for the messenger, where sheriff has taken bail (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the Messenger may apprehend the defendant A. B. [*or as may be*], and bring him to the bar: the Sheriff of —— having taken bail to an attachment for breach of the decree [*Or*, order] dated the ——, 187—.

The Sheriff's return accompanies.

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938. Motion paper, for the Serjeant-at-Arms, on Sheriff's return *non est inventus* (*y*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the Serjeant-at-Arms may apprehend the defendant A. B. [*or as may be*], and bring him to the bar, for breach of the decree [*Or*, order] dated ——, 187—: the Sheriff having returned *non est inventus* to an attachment.

The decree [*Or*, order], and Sheriff's return accompany.

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939. Motion paper, for *habeas*, on return by Serjeant-at-Arms that contemnor is in prison (*z*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*] for a *habeas*, directed to the keeper of the City of London prison at Holloway [*or as may be*], to bring the defendant [*or as may be*] to the bar, for breach of the decree [*Or*, order] dated the ——, 187—: the Serjeant-at-Arms having returned that he is in prison.

The order for the Serjeant-at-Arms, and his return, accompany.

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940. Petition of course, for the like (*z*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *Recite the order for the Serjeant-at Arms.*
2. It appears by the return of the Serjeant-at-Arms to the said

(*x*) See Dan. Pr. 909.

(*y*) *Ibid.*, 910; Ord. XXIX. 3. For order in like case, see Seton, 1222, No. 5. As to the Serjeant-at-Arms, see Dan. Pr. 418, 910; as to the delivery of the order to him, *ib.* 910; and as to his fees, *ib.*; Ord. XXX. 2.

(*z*) See Dan. Pr. 911. For order in like case, see Seton, 1224.

order, that the said (*Contemnor*) is in the custody of the Keeper of the City of London prison at Holloway [*or as may be*].

Your petitioner therefore humbly prays, that a writ of *habeas corpus cum causa* may issue, directed to the said Keeper, to bring the said (*Contemnor*) to the bar, for his contempt in the said order mentioned.

And your petitioner will ever pray, &c.

941.

The *habeas* (*a*).

Præcipe: / *The writ:* / *Indorsement:* } The same as Nos. 390—392, *ante:* describing correctly the custodian of the contemnor.

942.

Motion paper, to turn over, or remand, contemnor, when brought up by the Serjeant-at-Arms, or on *habeas* (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*]: on the defendant A. B. [*or as may be*] being brought up by the Serjeant-at-Arms [*Or*, by *habeas*] for breach of the decree [*Or*, order] dated the ——, 187—: that he be turned over [*Or*, remanded] to the City of London prison at Holloway.

943.

Præcipe for a sequestration for non-payment of money, where the sequestration issues without special order (*d*).

(2) *By Sequestration* (*c*).

In Chancery.

(*Reference to the record.*)

A. *v.* B. / [*Or*, In the matter of, *&c.*] } Seal a commission of sequestration against C. D., for not paying (*Describe what; as thus:* the sum of £500 to A. B.): directed to (*Insert the commissioners' names*), commissioners.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the sequestration: see ante,* No. 4, *or* 7.)

(*a*) See Dan. Pr. 911; and notes to Nos. 390—392, *ante.*

(*b*) See Dan. Pr. 911. For order in like case, see Seton, 1223, No. 1.

(*c*) As to sequestration on final process, and the practice as to the preparation, issuing, execution, and return of the writ, and incidental proceedings, see Dan. Pr. 912—923; Ord. 7 Jan. 1870. For forms of affidavits of service of a decree or order, and that same has not been obeyed, see *ante,* Nos. 929, 930. As to sequestration on *mesne* process, see Dan. Pr. 397, 402, 419.

(*d*) See Dan. Pr. 906, 907, 912, 913; Ord. 7 Jan. 1870, rr. 3, 5.

944.
Writ of sequestration, in like case (*e*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert the names of not less than four commissioners* (*f*)), greeting:

Whereas by an order made by us in our High Court of Chancery on the —— day of —— now instant [*or* last], in a certain cause there depending, wherein A. B. is plaintiff, and C. D. is defendant,

Or, a certain matter there depending, intituled (*Set out the title of the matter, as in the order*),

it was (*If so:* amongst other things) ordered (*Recite, in the past tense, such part of the order as directs payment of the money*): And whereas the said C. D. (*Name of person against whom the sequestration issues*) has been duly served with the said order, as by the affidavit of E. F. filed in this cause [*Or*, matter] on the —— day of ——, appears:

Show default, thus:—If in payment of money to a party, say: And whereas the said C. D. has not paid the said sum of £——, or any part thereof (*g*), as by the said order directed: as by the affidavit of L. M. (*Name of the person to whom the money is directed to be paid*), filed in this cause on the —— day of ——, appears.

Or, if of money into Court, say: And whereas the said C. D. has made default in payment of the said sum of £——: as by the certificate of the Accountant General dated the —— day of ——, appears

Know ye, therefore (*&c.: Continue as in No.* 331, *ante, to the end*).

945.
Præcipe for a sequestration, in other cases (*h*).

The same as No. 330, *ante;* but describe the contempt correctly.

946.
The writ (*h*).

The same as No. 331, *ante.*

947.
Indorsement on a sequestration (*h*).

The same as No. 332, *ante.*

(*e*) See Dan. Pr. 906, 907, 912, 913; Ord. 7 Jan. 1870, rr. 3, 5. For form of the writ, where it issues as of course for payment of costs only, see *post*, Chap. XXXI. Where a gross sum is directed to be paid in lieu of taxed costs, payment may be enforced either by *subpœna* and sequestration, or by the remedies provided to enforce payment of a sum of money.

(*f*) See *ante*, No. 331, n. (*b*); Dan. Pr. 912, n. (*p*).

(*g*) If part has been paid, the affidavit of default must state the date of payment, the amount paid, and the amount remaining due and unpaid.

(*h*) See Dan. Pr. 912, 913; and notes to Nos. 330—332, *ante.*

948.

Motion paper, for a sequestration, on Sheriff's return to an attachment (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for a sequestration against the defendant A. B. [*or as may be*], for breach of the decree [*Or*, order] dated the ——, 187—: on the Sheriff's return to an attachment.

The decree [*Or*, order], and Sheriff's return, accompany.

949.

The like, on Keeper's certificate, or Serjeant-at-Arms' return (*k*).

Proceed as in last Form, to 187—; *and add:*

on the certificate of the Keeper of the City of London prison at Holloway that he is in his custody [*Or*, the Serjeant-at-Arms having returned *non est inventus*].

The decree [*Or*, order], and the Keeper's certificate [*Or*, Serjeant-at-Arms' return], accompany.

950.

Return *nulla bona*, to a sequestration (*l*).

To the Right Honourable the Lord High Chancellor of Great Britain.

By virtue of the within commission, we do certify to your lordship, that we have made diligent search and inquiry after the real estate, and goods, chattels, and personal estate, of the within named (*Contemnor*), but cannot find that he is possessed of any real or personal estate that we can sequestrate and take into our hands, as by the within commission we are commanded. Witness our hands the —— day of ——, 187—.

A. B.
C. D. } Commissioners.

951.

General notice by sequestrators (*m*).

In Chancery.

(*Title, and reference to the record.*)

To E. F., of, *&c.*, and to whom else it may concern.

Whereas the above named J. R. R. formerly carried on business at, *&c.*, and resided at, *&c.*, and now has offices at, *&c.*

Now we, the undersigned (being the sequestrators named in the writ of sequestration hereinafter set forth), hereby give you, and each and every of you, notice that a writ of sequestration has been issued out of the High Court of Chancery, in the words and figures following, that is to say: (*Here followed a verbatim copy of the writ*); and which said writ is endorsed as follows: (*Here followed a copy of the indorsement*).

(*i*) See Dan. Pr. 909, 910. For order in like case, see Seton, 1214, No. 3.

(*k*) See Dan. Pr. 911, 912; Ord. XXIX. 4. For orders in like case, see Seton, 1224, No. 8; 1225, No. 9.

(*l*) Braithwaite's Pr. 291; and see Dan. Pr. 913.

(*m*) Adopted by the sequestrators in *Re Rush, ante*, No. 916, n. (*q*).

And further take notice, that we require from you, and each and every of you, an account of the messuages, lands, tenements, and real estate whatsoever of the said J. R. R. in your possession, tenure, and occupation; and also an account of all his goods, chattels, and personal estate whatsoever, in your possession, custody, or power; and also an account of all other the real and leasehold and other personal estate whatsoever of the said J. R. R.; and that you, and every of you, desist from aiding and abetting the said J. R. R. in disposing of the same, or any part thereof respectively.

And take notice, that we the undersigned require you, and each and every of you, to pay to us all rents, issues, profits and annual proceeds, interest, dividends and annuities, debts, and all other sum or sums of money whatsoever now due and payable from you respectively to the said J. R. R., or which may hereafter grow or accrue due or become owing and payable from you respectively to the said J. R. R.

Dated, *&c.*

(*Signed by the Sequestrators*).

Note: All communications to be addressed to Messrs. L. & G., solicitors, of, *&c.*

952.

Notice to tenant to attorn to sequestrators (*n*).

In Chancery.

(*Title, and reference to the record.*)

We, A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 187—, against the property of (the defendant) E. F., hereby give you notice and require you to attorn and become tenant to us for (*Describe the property; as thus:* all that farm called the Bourne, situate at ——, in the county of ——), and for such other part or parts of the real estate of the said E. F. as is or are in your occupation; and to pay to us your rent in arrear and growing rent for the said premises. Dated this —— day of ——, 187—.

A. B.
C. D.

To G. H., of (*residence and addition*).

953.

Attornment thereon (*n*).

In Chancery.

(*Title, and reference to the record.*)

I, G. H., of (*residence and addition*), attorn and become tenant to A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 187—, against the property of (the defendant) E. F., for all that (*Describe the property; see description in last Form*), with the appurtenances, as the same are now in my occupation: to hold the same at and

(*n*) See Dan. Pr. 916. As to the mode of service of the sequestration, see *ib.*

under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said A. B. and C. D. the sum of (one shilling) for and on account, and in part payment, of the said rent. Dated this —— day of ——, 187—.

Witness : G. H.

L. M., of (*residence and addition*).

954.

Notice of motion, for tenant to attorn (*o*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that G. H., of (*residence and addition*), may be ordered, within (eight) days after service, to attorn and become tenant for the (*Describe the property : see ante*, No. 952), and pay his rent in arrear and growing rent for the same, to A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 187—, against the defendant E. F.

955.

Affidavit in support (*p*).

Formal parts: see ante, No. 9.

1. *Prove service of the notice to attorn : see ante*, Nos. 47, 952.

If the service was personal, prove production of the sequestration; as thus: 2. At the time of the service aforesaid of the said notice, I showed to the said (*tenant's name*), the commission of sequestration in the said notice mentioned or referred to, and which said commission appeared to me to have been regularly issued out of, and to be under the seal of, this honourable Court.

Or, if the service was not personal, prove service of the sequestration; as thus: 2. At the time of the service aforesaid of the said notice, I served the said (*tenant's name*) with the commission of sequestration therein mentioned or referred to, and which appeared to me to have been regularly issued out of, and to be under the seal of, this honourable Court, by delivering to, and leaving with, the said (*State whom*), a true copy of the said commission, and of the indorsement thereon; and I at the same time showed to the said (*State whom*), the said commission so under seal as aforesaid.

3. *Prove service of the notice of motion to attorn : see ante*, No. 47.

(*o*) See Dan. Pr. 916. For order in like case, see Seton, 1219.

(*p*) See Dan. Pr. 916.

956.
Motion paper, notice of motion, or summons, for leave to sell certain personal property sequestered(*q*).

Formal parts: see ante, No. 53, 55, *or* 60.
on the part of J. S., J. D., *&c.*, the sequestrators acting under the sequestration issued in this matter on the —— against the above named J. R. R., and on the part of the above named G. C. S. D. (*Person at whose instance the sequestration was issued*):

1. That the said J. S., J. D., *&c.*, the sequestrators acting under the said commission, or any three or two of them, may be at liberty to sell, or cause to be sold, the goods, chattels, and effects of the said J. R. R., to wit, divers packages, Nod., *&c.*, or other his goods, chattels, and effects, now stored at Messrs. T. & Co.'s, at their repository at, *&c.;* and also divers other his goods, chattels, and effects, now at his office situate at, *&c.;* and at the residence of R. H., situate at, *&c.;* and other goods, chattels, and effects, and personal estate and property of the said J. R. R., of a like nature now under the control of the said sequestrators.

2. That the said sequestrators may be at liberty to pay the money arising from such sales to the said G. C. S. D.

3. And that the said sequestrators, or any three or two of them, may be at liberty to remove all deeds, books, and papers, or other unsaleable effects and property of the said J. R. R., or in his custody or control, or held on his behalf, as a solicitor for other persons, from the offices of the said J. R. R., situate at, *&c.*, or elsewhere soever the same may have been deposited by or on behalf of the said J. R. R., to a convenient place under the control of the said sequestrators.

957.
Notice of motion, for sequestrators to account (*r*).

Formal parts: see ante, No. 55.
that A. B., *&c.*, the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 187—, against the defendant E. F., may be ordered to leave their accounts in the chambers of the said Judge, situate in Rolls' Yard, Chancery Lane, London [*or as may be*], on or before the —— day of ——, 187—, or within (eight) days after service, and at such other times as the said Judge shall appoint; and to pay the balances appearing due on their accounts, or such part thereof as the Chief Clerk shall certify as proper to be paid by them, into the bank, to the credit of this cause, within ten days (exclusive of vacations) after the Chief Clerk's certificate of the result of such accounts respectively shall become absolute, or at such other periods as the Judge shall direct.

(*q*) *Re Rush*, M. R. 11 Feb. 1870, Reg. Lib. B. 337: 18 W. R. 417: on *ex parte* motion; and see Dan. Pr. 915, 916; Seton, 1218; and *ante*, Nos. 915, 916.

(*r*) See Dan. Pr. 916. For order in like case, see Seton, 1219, No. 2; and see prayer of No. 915, *ante*. As to the payment of money into Court, see *post*, Chap. XL.

958.

Notice of motion, or summons, for an examination *pro interesse suo* (*s*).

Formal parts: see ante, No. 55, *or* 60.

on the part of G. H., of (*residence and addition*), that an inquiry may be made whether the said G. H. has any and what interest in the real and personal estate [*or as may be*] sequestered by A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 187—, against (the defendant) E. F., or in any and what part thereof.

959.

Notice of motion, or summons, for dissolution of sequestration, and discharge of sequestrators (*t*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant M. S. (*the contemnor*):

1. That the attachment issued against the defendant M. S., for want of his answer to the plaintiffs' bill, and the commission of sequestration for the same cause, issued pursuant to order dated, *&c.*, may respectively stand dissolved.

2. That the costs of the plaintiffs, and of the sequestrators acting under the said commission, of and incidental to the said attachment, and their costs, charges, and expences of and incidental to the said sequestration: including therein all usual and proper allowances to the said sequestrators in respect of their office: and their costs of this application, and of and incidental thereto, may be taxed by the Taxing Master as between solicitor and client, in case the parties differ about the same, and be respectively (paid and) retained by the said sequestrators in manner hereinafter mentioned.

3. That A. B., C. D., *&c.*, the sequestrators acting under the said commission, may be ordered to withdraw from possession of the real estate of the defendant M. S., situate at, *&c.:* being the property taken possession of by the said sequestrators under the said sequestration: and from the receipt of the rents and profits thereof, within ten days after service of the order to be made on this application.

4. That the said sequestrators may be ordered within the time aforesaid to give notice to the tenants of such withdrawal; and be allowed their costs thereof, as between solicitor and client, in their costs hereinbefore directed to be taxed and retained.

5. That the said sequestrators may be directed to pay the plaintiffs' said costs, and be at liberty to retain such costs, and their own costs, and costs, charges, and expences: when respectively taxed, or agreed, as aforesaid: out of the monies in their hands;

(*s*) See Dan. Pr. 919. For order in like case, see Seton, 1220, No. 1. As to when this application may be made, and the practice thereon, see Dan. Pr. 919, 921. The application should be supported by affidavit of the facts under which the claim arises: *ib.* 919; and it may be made in *formâ pauperis: ib.* 920; and see *ante*, No. 95.

(*t*) See Dan. Pr. 923. For order in like case, on summons, see *Rawlinson v. Stringer*, M. R., for V. C. S., at Chambers, 11 Sept. 1868, Reg. Lib. B. 2507.

and be allowed the same in their accounts, as payments properly made by them out of such monies.

6. That the said sequestrators may be ordered to pay what shall be found due from them on the balance of their accounts to the defendant M. S., or as he may direct, within ten days from the date of the approval by the Judge of the Chief Clerk's certificate, or within such other period as the Judge shall direct. And that thereupon the said sequestrators may be released and discharged from all liability in respect of their said office.

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(3) *By Writ of Assistance* (*u*).

960.

Motion paper, for writ of assistance (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for a writ of assistance, directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], to put the plaintiff [*or as may be*] into possession of the premises in question, pursuant to the order dated the ——, 187—.

The order, and an affidavit in support, accompany.

961.

Affidavit in support (*y*).

Formal parts: see ante, No. 9.

1. *Prove service of the order directing possession to be delivered: see ante*, No. 48 (*z*).

2. *Prove refusal; as thus:* The defendant A. B., at the time of the service aforesaid of the said order, refused to pay obedience thereto, by delivering possession of the premises in the said order mentioned to the plaintiff, as thereby directed; and the said defendant A. B. still detains and keeps possession of the said premises.

3. *Show means of knowledge.*

(*u*) As to this writ, see, generally, Ord. XXIX. 5; Dan. Pr. 923, 924; and to put sequestrators in possession, Dan. Pr. 917.

(*x*) See Dan. Pr. 924. For order in like case, see *Hearn* v. *Bannister*, V. C. S., 5 July, 1865, Reg. Lib. A. 1305; and see Seton, 1228, No. 1.

(*y*) See Dan. Pr. 924. It will be sufficient to show that the order was not complied with within the time limited: *ib.*

(*z*) The affidavit need not show that the copy of the order was indorsed with the notice required previously to the issue of an attachment (see *ante*, No. 922): such indorsement, in this case, being unnecessary: Dan. Pr. 924.

962.

Præcipe for a writ of assistance (*a*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a writ of assistance, directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], to put the plaintiff [*or as may be*] into possession, pursuant to order dated the —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

963.

The writ (*b*).

Victoria (*&c.: see ante*, No. 313.)

To the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], as well present as for the future, greeting:

Whereas, according to the tenor and true meaning of an order made in a certain cause depending in our High Court of Chancery, between A. B., plaintiff, and C. D., defendant [*or as may be*], the said C. D. was ordered and enjoined to deliver up possession to the said A. B., in the said order named, of all that capital messuage or mansion house, lands, and premises, in the pleadings in the said cause mentioned [*or as may be*]: yet, nevertheless, he the said C. D., and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep the possession of the said mansion house, lands, and premises [*or as may be*], in manifest contempt of us and our said Court: And whereas by an order made in the said cause, bearing date the —— day of ——, 187—, it was ordered that a writ of assistance should issue, directed to the Sheriff of the county of ——, to put the said A. B. into possession of the premises in question, pursuant to the said hereinbefore recited order [*or as may be*]: Know ye, therefore, that we, being willing and desirous that justice should be done to the said A. B., in this behalf, do give unto you full power and authority to place and put the said A. B., or his assigns, without delay, into the full, peaceable, and quiet possession of all and singular the said mansion house, lands and premises [*or as may be*], with their appurtenances, and from time to time, as often as there shall or may be occasion, to maintain and keep him, and his assigns, in such peaceable and quiet possession, according to the intent and true meaning of the said orders of our said Court; and therefore we do hereby command and enjoin you, that immediately after your receipt of this writ, you do go and repair to, and enter into and upon, the said

(*a*) Braithwaite's Pr. 157. As to the preparation, issuing, and execution of the writ, see Dan. Pr. 924.

(*b*) See Braithwaite's Pr. 156. A fee of 20*s.* is payable on issuing the writ, by a Chancery fee fund stamp affixed thereto: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. In preparing the writ, the language of the decree or order should be followed: Dan. Pr. 924.

mansion house, lands, and premises [*or as may be*], and that you do remove, eject, and expel the said C. D., his tenants, servants, and accomplices, each and every of them, out of and from the said mansion house, and every part and parcel thereof, and that you do place and put the said A. B., and his assigns, into the full, peaceable, and quiet possession thereof, and defend and keep him, and his said assigns, in such peaceable and quiet possession, when and as often as any interruption may or shall from time to time be given or offered to them or any of them: according to the true intent and meaning of the said orders; and herein you are not in anywise to fail. Witness (*&c.: Conclude as in* No. 313, *ante*).

964.

Writ of Assistance.

(*Short title; as thus:* Adams *v.* Brown.)

(*Name, &c., of solicitor or party issuing the writ: see ante,* No. 4 *or* 7.)

Indorsement on the writ (*c*).

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(4) *By Fieri Facias* (*d*).

965.

Præcipe for a *fieri facias*, for payment of money only (*e*).

In Chancery.

A. v. B. } (*Reference to the record.*) Seal a writ of *fieri facias*, directed to the Sheriff of Anglesey [*or as may be: see ante,* No. 308 (*f*)], against

(*c*) See Braithwaite's Pr. 157; Dan. Pr. 924.

(*d*) For the practice in equity, as to writs of *fieri facias* and *elegit*, see Dan. Pr. 925—927; Ord. XXIX. 6; 1 & 2 Vic. c. 110, s. 18; and at law, Chitty's Arch. 644, *et seq.*; 682, *et seq.* For the forms in use at law, see Chitty's Forms, 316, *et seq.*; 352, *et seq.* Each writ must be engrossed on parchment, and have affixed to it a Chancery fee fund stamp of £1: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. As to a second *fieri facias*, or an order for payment of an unsatisfied amount, see Dan. Pr. 926; and for the practice at law, see Chitty's Arch. 680; Chitty's Forms, 326, *et seq.*

(*e*) Braithwaite's Pr. 210. At the time a writ of *fieri facias*, or *elegit* is presented for sealing, the decree or order, or an office copy thereof, upon which one of the entering clerks has marked the day of the month and year on which the same was left for entry, must be produced, and a *præcipe* must be filed; and if the writ is issued for costs, and such costs have been taxed, an office copy of the Taxing Master's certificate of taxation must also be produced: Dan. Pr. 925. As to these writs, where issued for payment of costs only, see *post*, Chap. XXXI.

(*f*) Writs of *fieri facias* and *elegit* are not now directed to Chancellors of counties palatine, but to the Sheriffs of such counties: see Common Law Procedure Act, 1852 (15 & 16 Vic. c. 76), s. 122, and Cons. Ord. XXIX. r. 8. Thus, in *Moxon* v. *Bright* (1867, M. No. 147), writs of *fieri facias* were sealed on 24 June, 1869, directed to the Sheriff of Lancashire; and were executed and returned by him accordingly, on the 15 July, 1869.

C. D., of (*residence and addition*), for not paying the sum of £—— (*the sum mentioned in the order*) to A. B.

Order (*directing payment*) dated —— day of ——, 187—.

Tested —— day of ——,187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4 *or* 7.)

966.

The writ (*g*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff of Anglesey [*or as may be: see ante*, No. 308 (*h*)], greeting:

We command you, that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of £——, which lately before us in our High Court of Chancery, in a certain cause [*Or*, certain causes—*as the case may be*], wherein A. B. is plaintiff, and C. D. is defendant [*Or*, in a certain matter there depending, intituled "In the matter of E. F."—*as the case may be*], by a decree [*Or*, order—*as the case may be*] of our said Court, bearing date the —— day of ——, was decreed [*Or*, ordered—*as the case may be*] to be paid by the said C. D. to A. B. And that of the goods and chattels of the said C D. in your bailiwick you further cause to be made interest upon the said sum of £——, at the rate of 4*l.* per centum per annum, from the —— day of —— (*i*). And that you have that money and interest before us in our said Court, immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said decree [*Or*, order—*as the case may be*]. And that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof. And have there then this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

967.

Indorsement thereon (*k*).

By the Court.

(*Add the name, place of residence, and calling of the party against whom the writ is issued.*)

(*Add, also, the name, &c., of the solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

(*g*) Ord. XXIX. 6, and Sched. F. No. 1.

(*h*) See *ante*, No. 965, n. (*f*).

(*i*) The day on which the decree or order was made; or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838."

(*k*) Braithwaite's Pr. 209. As to the indorsement on a writ of *fieri facias* or *elegit*, see Ord. XXIX. 10; Dan. Pr. 925.

Levy £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*date of the order*), together with £—— (*add the sum paid for the warrant, to the sum of* £2) for this writ, warrant, &c., besides sheriff's poundage, officer's fees, and all other incidental expenses.

968.

Præcipe for a *fieri facias*, for payment of money and interest (*l*).

The same as No. 965, *ante;* but say: "for not paying the sum of £—— (*the sum mentioned in the order*), and interest thereon from the —— of ——, 187— (*the day mentioned in the order*), to A. B."

969.

The writ (*m*).

Proceed as in No. 966, *ante, to* cause to be made; *and continue as follows:*

the sum of £——, and also interest thereon, at the rate of 4*l.* per centum per annum, from the —— day of —— (*n*): which said sum of money and interest were lately, before us, in our High Court of Chancery, in a certain cause [*Or*, certain causes—*as the case may be*], wherein A. B. is plaintiff, and C. D. is defendant [*Or*, in a certain matter there depending, intituled "In the matter of E. F.,"—*as the case may be*] by a decree [*Or*, order—*as the case may be*] of our said Court, bearing date the —— day of ——, decreed [*Or*, ordered—*as the case may be*] to be paid by the said C. D., to A. B. And that you have that money and interest before us, in our said Court, immediately after the execution hereof, to be paid (*Conclude as in* No. 966, *ante*).

970.

Indorsement thereon (*o*).

The same as No. 967, *ante;* but say: "Levy £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*the day mentioned in the order*), together with," *&c.*

971.

Præcipe for a *fieri facias*, for payment of money and costs (*p*).

The same as No. 965, *ante;* but say: "for not paying the sum of £—— (*the sum mentioned in the order*), and £—— for costs, to A. B."; and insert, before "Tested": "Taxing Master's certificate, dated —— day of ——, 187—."

(*l*) Braithwaite's Pr. 211; and see Dan. Pr. 924, 925.

(*m*) Ord. XXIX. 6, and Sched. F. No. 2.

(*n*) The day mentioned in the order.

(*o*) See Braithwaite's Pr. 211.

(*p*) *Ibid.* 213; and see Dan. Pr. 924, 925. For form of a *fieri facias* for payment of costs only, see *post*, Chap. XXXI.

972.

The writ (*q*).

Proceed as in No. 966, *ante, to* cause to be made; *and continue as follows:*

the sum of £——: which said sum of money was lately before us, in our High Court of Chancery, in a certain cause [*Or*, certain causes—*as the case may be*], wherein A. B. is plaintiff, and C. D. is defendant [*Or*, in a certain matter there depending, intituled "In the matter of E. F."—*as the case may be*], by a decree [*Or*, order—*as the case may be*] of our said Court, bearing date the —— day of ——, decreed [*Or*, ordered—*as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said order mentioned, and which costs have been taxed and allowed by G. H., esquire, one of the Taxing Masters of our said Court, at the sum of £——: as appears by the certificate of the said Taxing Master, dated the —— day of ——. And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of £—— (*r*), together with interest at the rate of 4*l.* per centum per annum, on the said sum of £—— (*s*), from the —— day of —— (*t*), and on the said sum of £—— (*r*), from the —— day of —— (*u*). And that you have that money and interest before us in our said Court, immediately after the execution hereof, to be paid (*Conclude as in* No. 966, *ante*).

973.

Indorsement thereon (*x*).

The same as No. 967, *ante;* but say: "Levy £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*the date of the order*); also £—— (*the amount of the costs*), and interest thereon from the —— day of —— (*the date of the Taxing Master's certificate*), together with," *&c.*

974.

Præcipe for a *fieri facias*, for payment of money, interest, and costs (*y*).

The same as No. 965, *ante;* but say: "for not paying the sum of £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*the day mentioned in the order*), and £—— costs, to A. B."; and insert, before "Tested," "Taxing Master's certificate dated —— day of ——, 187—."

(*q*) Ord. XXIX. 6, and Sched. F. No. 3.

(*r*) The costs.

(*s*) The money.

(*t*) The date of the order; or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838."

(*u*) The date of the certificate; or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838."

(*x*) Braithwaite's Pr. 213.

(*y*) *I bid.* 215; and see Dan. Pr. 924, 925.

975.
The writ (*z*).

Proceed as in No. 966, *ante, to* cause to be made ; *and continue as follows :*
the sum of £——, and also interest thereon at the rate of 4*l.* per centum per annum, from the —— day of —— (*a*) : which said sum of money and interest was lately before us, in our High Court of Chancery, in a certain cause [*Or*, certain causes—*as the case may be*], wherein A. B. is plaintiff, and C. D. is defendant [*Or*, in a certain matter there depending, intituled " In the matter of E. F."—*as the case may be*], by a decree [*Or*, order—*as the case may be*] of our said Court, bearing date the —— day of ——, decreed [*Or*, ordered—*as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said decree [*Or*, order—*as the case may be*] mentioned, and which costs have been taxed and allowed by G. H., esquire, one of the Taxing Masters of our said Court, at the sum of £——, as appears by the certificate of the said Taxing Master, dated the —— day of ——. And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of £——, together with interest thereon at the rate aforesaid, from the —— day of —— (*b*). And that you have that money and interest before us in our said Court, immediately after the execution hereof, to be paid (*Conclude as in* No. 966, *ante*).

976.
Indorsement thereon (*c*).

The same as No. 967, *ante ;* but say : " Levy £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*the day mentioned in the order*) ; also £—— (*the amount of the costs*), and interest thereon from the —— day of —— (*the date of the Taxing Master's certificate*), together with," *&c.*

977.
Præcipe for a writ of *venditioni exponas* (*d*).

In Chancery.
(*Reference to the record.*)
A. v. B. } Seal a writ of *venditioni exponas*, directed to the Sheriff of ——, to sell the goods, &c., of C. D., taken under a writ of *fieri facias*, tested the —— day of ——, 187—, in this cause.
Tested —— day of ——, 187—,
(*Name, &c., of solicitor or party issuing the writ : see ante*, No. 4 *or* 7.)

(*z*) Ord. XXIX. 6, and Sched. F. No. 4.
(*a*) The day mentioned in the order.
(*b*) The date of the certificate of taxation ; or, if that were prior to the 1st October, 1838, say, " from the 1st day of October, 1838."
(*c*) Braithwaite's Pr. 215.
(*d*) *Ibid.* 270. As to this writ, see Dan. Pr. 926 ; Ord. XXIX. 9 ; and for the practice at law as to a like writ, see Chitty's Arch. 678—680.

978.

The writ (*e*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff of Anglesey [*or as may be : see ante*, No. 308 (*f*)], greeting :

Whereas, by our writ, we lately commanded you that of the goods and chattels of C. D. (*Recite the fieri facias to the end*): And on the —— day of —— you returned to us in our Court of Chancery aforesaid, that by virtue of the said writ to you directed, you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale, and sell or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same. And have the money arising from such sale before us, in our said Court of Chancery aforesaid, immediately after the execution hereof, to be paid to the said A. B. And have there then this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

979.

Indorsement thereon (*g*).

By the Court.

(*Name, &c., of the solicitor or party issuing the writ: see ante*, No. 4 *or* 7.)

980.

Return to a *fieri facias*, where Sheriff deducted and retained the expenses of execution (*h*).

Surrey.—By virtue of the annexed writ (*i*), to me directed, I have caused to be made of the goods and chattels of the therein named A. B. (*Name of the person against whom the writ is issued*) £— ; out of which I have retained £— for levying the said execution, keeping possession of the said goods and chattels, and for poundage ; and the residue thereof, being £—, I have ready to pay to the therein named C. D. (*Name of the person on whose behalf the writ issued*) : as by the said writ I am commanded. And I further certify that the said A. B. hath not any other goods or chattels in my bailiwick whereof I can cause to be made the residue of the said (*Costs*) and interest, in the writ mentioned, or any part thereof.

X. Y., Sheriff.

(*e*) Ord. XXIX. 9, and Sched. II.

(*f*) See *ante*, No. 965, n. (*f*).

(*g*) Braithwaite's Pr. 270.

(*h*) *Onyon* v. *Washbourn* (1848, O. No. 15) ; *fieri facias* sealed 10th May, 1850 ; return filed 22 June, 1850.

(*i*) The sheriff's return is either endorsed at large on the original writ, or is set forth in a document annexed thereto. In the latter case, the writ is usually endorsed as follows : "The execution of this writ appears in the schedule annexed—. The answer of X. Y., Sheriff."

981.

Return to a *fieri facias* issued against three, but levy made on goods of one only (*j*).

By virtue of this writ to me directed and delivered, I have caused to be made of the goods and chattels of the within named A. B. (*Name of the person upon whose goods the levy was made*) the sum of £— (*the amount actually levied*): which money I have paid over to the attornies for the within named C. D. (*Name of the person on whose behalf the writ issued*), in part satisfaction of his sum of money and interest within mentioned. And I certify that the within named A. B. hath not any more goods or chattels in my bailiwick; and the within named E. F. and G. H. (*Names of the other persons against whom the writ issued*) have not, nor hath either of them, any goods or chattels in my bailiwick whereof I can cause to be made the residue of the sum of money and interest within mentioned, or any part thereof, as within I am commanded.

The answer of X. Y.,
Sheriff.

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(5) *By Elegit* (*k*).

982.

Præcipe for an *elegit*, for payment of money, or money and interest (*l*).

The same as No. 965, *ante*: substituting "*elegit*" for "*fieri facias*"; and if for money and interest, add, before A. B.: "and interest thereon from the —— day of ——, 187—, (*the day mentioned in the order*)."

983.

The writ (*m*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff of Anglesey [*or as may be: see ante*, No. 308(*n*)], greeting:

Whereas, lately, in our High Court of Chancery in a certain cause [*Or*, certain causes—*as the case may be*], there depending, wherein A. B. and others are plaintiffs, and C. D. and others are defendants [*Or*, in a certain matter there depending, intituled "In the matter of E. F."—*as the case may be*], by a decree [*Or*, order—*as the case may be*] of our said Court, made in the said cause [*Or*, matter—*as the case may be*], and bearing date the —— day of ——, it was decreed and ordered [*Or*, ordered—*as the case may be*], that the said C. D. should pay unto A. B. the sum of £—— (*If interest be given by the order, add:* together with interest thereon, after the rate of 4*l.* per centum per annum, from

(*j*) *Moxon* v. *Bright* (1867, M. No. 147); *fieri facias* directed to the Sheriff of Lancashire, and sealed 24th June, 1869; return filed 15 July, 1869.

(*k*) As to the writ of *elegit*, see *ante*, No. 965, nn. (*d*), (*e*), (*f*).

(*l*) Braithwaite's Pr. 199; and see Dan. Pr. 925.

(*m*) Ord. XXIX. 6, and Sched. G. No. 1.

(*n*) See *ante*, No. 965, n. (*f*).

the —— day of ——): And afterwards, the said A. B. came into our said Court of Chancery, and according to the form of the statute in such case made and provided chose to be delivered to him [her—*Or*, them—*as the case may be*], all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the —— day of ——, in the year of our Lord 18— (*o*), or at any time afterwards, or over which the said C. D. on the said —— day of —— (*o*), or at any time afterwards, had any disposing power, which he might, without the consent of any other person, exercise for his own benefit: to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £——, together with interest thereon, at the rate of £— per centum per annum, from the said —— day of —— (*p*) shall have been levied: Therefore we command you, that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of —— (*o*), or at any time afterwards, or over which the said C. D. on the said —— day of —— (*o*), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit: to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court of Chancery aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

(*o*) The day on which the decree or order was made.

(*p*) If the order be for money and interest, the day mentioned in the order. If for money only, the day on which the decree or order was made; or, if it was made prior to the 1st of October, 1838, say, "from the 1st day of October, 1838."

984.

Indorsement on the *elegit* (*q*).

The same as No. 967, *ante;* but say: "Levy £—— (*the sum mentioned in the order*), and interest thereon from the —— day of —— (*the date of the order—Or if interest is ordered to be paid, then the day mentioned in the order*), together with," *&c.*

985.

Præcipe for an *elegit*, for payment of money and costs (*r*).

The same as No. 965, as varied by No. 971, *ante;* but substitute "*elegit*," for "*fieri facias.*"

986.

The writ (*s*).

Proceed as in No. 983, *ante, to* pay unto A. B.; *and continue as follows:*

the sum of £——, together with certain costs as in the said decree [*Or,* order—*as the case may be*] mentioned; and which costs have been taxed and allowed by G. H., esquire, one of the Taxing Masters of our said Court, at the sum of £——, as appears by the certificate of the said Taxing Master, dated the —— day of ——. And afterwards (*Proceed as in* No. 983, *ante, to the first* until; *and continue as follows:*)

the said two several sums of £——, and £——, together with interest upon the said sum of £——, at the rate of 4*l.* per centum per annum, from the —— day of —— (*t*), and on the said sum of £——, at the rate aforesaid, from the —— day of —— (*u*), shall have been levied. Therefore we command you (*Proceed as in* No. 983, *ante, to the second* until; *and continue as follows:*)

the said two several sums of £—— and £——, together with interest aforesaid, shall have been levied. And in what manner (*Conclude as in* No. 983, *ante*).

987.

Indorsement thereon (*x*).

The same as No. 967, as varied by No. 973, *ante.*

(*q*) Braithwaite's Pr. 199.

(*r*) *Ibid.*, 205; and see Dan. Pr. 925. For form of *elegit* for payment of costs only, see *post,* Chap. XXXI.

(*s*) Ord. XXIX. 6, and Sched. G. No. 3.

(*t*) The day on which the decree or order was made; or, in case it was made prior to the 1st of October, 1838, say, "from the 1st day of October, 1838"

(*u*) The date of the certificate of taxation; or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838"

(*x*) Braithwaite's Pr. 204.

988.

Præcipe for an *elegit*, for payment of money, interest, and costs (*y*).

The same as No. 965, as varied by No. 974, *ante;* but substitute "*elegit*," for "*fieri facias*."

989.

The writ (*z*).

Proceed as in No. 983, *ante, to* pay unto A. B.; *and continue as follows:*

the sum of £——, together with interest thereon, after the rate of £— per centum per annum, from the —— day of ——, together also with certain costs, as in the said decree [*Or*, order—*as the case may be*] mentioned; and which costs have been taxed and allowed by G. H., esquire, one of the Taxing Masters of our said Court, at the sum of £——, as appears by the certificate of the said Taxing Master, dated the —— day of ——. And afterwards (*Proceed as in* No. 983, *ante, to the first* until; *and continue as follows:*)

the said two several sums of £——, and £——, together with interest upon the said sum of £——, at the rate of £— per centum per annum, from the said —— day of —— (*a*), and on the said sum of £——, at the rate of 4*l.* per centum per annum, from the —— day of —— (*b*), shall have been levied. Therefore we command you (*Proceed as in* No. 983, *ante, to the second* until; *and continue as follows:*)

the said two several sums of £——, and £——, together with interest aforesaid, shall have been levied. And in what manner (*Conclude as in* No. 983, *ante*).

990.

Indorsement thereon (*c*).

The same as No. 967, as varied by No. 976, *ante*.

991.

Subpœna ad test., for attendance of a witness upon an inquisition under an *elegit* (*d*).

Victoria (*&c.: see ante*, No. 313).

To A. B. (*Name of the witness*), greeting:

We command you, that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before our Sheriff of —— (*Name of county*), at his office in (*State where*), on the —— day of —— (*State the time of attendance*), by —— of the

(*y*) Braithwaite's Pr. 208; and see Dan. Pr. 925.

(*z*) Ord. XXIX. 6, and Sched. G. No. 4.

(*a*) The day mentioned in the decree or order.

(*b*) The date of the certificate of taxation; or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838"

(*c*) Braithwaite's Pr. 207.

(*d*) *Hodder* v. *Lane* (1866, H. No. 238); *subpœna* sealed 9 May, 1868. See also *Corporation of Hythe* v. *East* (1865, H. No. 229); *subpœna* sealed 4 Sep-

clock in the forenoon of the same day, to testify the truth according to your knowledge in a certain suit now depending in our High Court of Chancery wherein C. D. (*Name of plaintiff*) is plaintiff, and E. F. (*Name of defendant*) is defendant: on the part of J. K. (*Name of person on whose behalf elegit issued*): in which suit an inquiry will be then and there made of the goods and chattels of G. H. (*Name of person against whom elegit issued*), in the bailiwick of the said Sheriff: except his oxen and beasts of the plough; and also of all such lands and tenements, rectories, tithes, rents, and hereditaments: including lands and hereditaments of copyhold or customary tenure: in his said bailiwick, as the said G. H. or any person or persons in trust for him was or were seized or possessed of on the —— day of —— (*the day mentioned in the elegit*), or at any time afterwards, or over which the said G. H., on the said —— day of ——, or at any time afterwards, had any disposing power which he might, without the assent of any other person or persons, exercise for his own benefit, and hereof fail not at your peril. Witness (*&c.: conclude as in* No. 313, *ante*).

992.

Inquisition taken upon, and returned to, an *elegit*, where an interest in possession was seized by the Sheriff (*e*).

Middlesex.—An inquisition, indented, taken at the house known as the Sheriff's Office in Red Lion Square, in the said county, on the —— day of ——, A.D. 187—, before me S. T., esquire, and X. Y., esquire, Sheriff of the county aforesaid, by virtue of Her Majesty's writ of *elegit* to me the said Sheriff directed, and to this inquisition annexed, on the oath of (*Names of the twelve jurors*), good and lawful men of my bailiwick: who, being duly sworn and charged to inquire of the several matters in the said writ mentioned, on their oath say, that A. B. (*Name of the person against whom elegit issued*), in the said writ named, was on the —— day of —— (*the day mentioned in the writ*), and on the day of taking this inquisition is, possessed (*f*), as of his own lands and tenements, of (a life estate in three houses and premises situate and being Nos. — and —, in —— Street, in the parish of ——, and No. —— in —— Street, in the parish of ——, all in the said county of Middlesex): which said lands and premises the jury aforesaid, upon

tember, 1869; and *Healey* v. *Chichester, &c., Railway* (1868, H. No. 54); *subpœna* sealed 19 November, 1869. The *subpœna* may be sealed, as of course, in like manner as upon a writ of inquiry before the Sheriff: see Ord. XLI. For the practice as to issuing and serving a *subpœna ad test.*, see Dan. Pr. 801, *et seq.* For forms of *præcipe* and endorsement, see *ante*, Nos. 762, 764.

(*e*) *Hodder* v. *Lane* (1866, H. No. 238); return filed 27 May, 1869. The inquisition must be written on parchment, and indented at the top thereof. The Sheriff's return to a writ of *elegit* is endorsed by him thereon, as follows: "The execution of this writ appears by the inquisition annexed.—The answer of X. Y., Sheriff."

(*f*) If the interest be contingent only, the nature and general particulars thereof should be clearly set forth. For a case, see *Re Leeds Banking Company* (1866, L. No. 65); inquisition filed 15th May, 1866.

their oath aforesaid, do find to be of the annual value of £——; and which said lands and tenements I, the said Sheriff, on the day of taking this inquisition, have caused to be delivered to C. D. (*Name of the person on whose behalf the elegit issued*), in the said writ also named, at reasonable price and extent aforesaid: as by the said writ I am commanded; To hold the same to him the said C. D., and his assigns, according to the nature and tenure thereof, until the monies in the said writ mentioned, with interest, as in the said writ also mentioned, shall have been levied. And the jurors aforesaid, upon their oath aforesaid, further say, that the said A. B. on the said —— day of —— (*the day mentioned in the writ*) had not, nor on the day of taking this inquisition hath, any goods or chattels, nor any other or more lands and tenements in my said bailiwick, to the knowledge of the said jurors, which I the said Sheriff can cause to be extended and appraised, as by the said writ I am commanded. In witness whereof I, the said Sheriff, have hereto set my seal, and the jurors aforesaid have set their seals, the day, year, and place first above written.

(*Official seal of Sheriff.*) (*Here followed twelve plain wax seals, without signatures of jurors, or any attestation whatever.*)

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3. *Process against a Beneficed Clerk* (*g*).

993.

Præcipe for a *fieri facias de bonis ecclesiasticis* (*h*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a writ of *fieri facias de bonis ecclesiasticis*, directed to the Bishop [*Or*, Archbishop—*if the See is vacant*] of ——, against C. D., for not paying the sum of £—— (*If of costs, add:* costs), to A. B.

Order (*directing payment*) dated —— day of ——, 187—.

(*If of costs, add:* Taxing Master's certificate, dated —— day of ——, 187—.)

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

994.

The writ, directed to the Bishop (*i*).

Victoria (*&c.: see ante*, No. 313).

To the Right Reverend Father in God (John), by Divine permission Lord Bishop of ——, greeting:

We command you, that of the ecclesiastical goods of C. D., clerk, in your diocese, you cause to be made £——, which, lately before

(*g*) For the practice in equity, see Dan. Pr. 927; Ord. XXIX. 11—13; and at law, see Chitty's Arch. 1283, *et seq.*

(*h*) Braithwaite's Pr. 222. As to the writ of *fieri facias*, in ordinary cases, see *ante*, No. 965, *et seq.*

(*i*) Ord. XXIX. 11, and Sched. J. No. 1.

us in our Court of Chancery, in a certain cause [*Or*, certain causes —*as the case may be*], wherein A. B. is plaintiff and C. D. is defendant [*Or*, in a certain matter there depending, intituled "In the matter of E. F."—*as the case may be*] by a decree [*Or*, order —*as the case may be*] of our said Court, bearing date the —— day of ——, was decreed [*Or*, ordered *as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——; and have that money, together with such interest as aforesaid, before us in our said Court, immediately after the execution hereof, to be rendered to the said A. B.: for that our Sheriff of —— returned to us in our said Court, on —— [*Or*, at a day now past], that the said C. D. had not any goods or chattels, or any lay fee, in his bailiwick, whereof he could cause to be made the said £——, and interest aforesaid, or any part thereof, and that the said C. D. was a beneficed clerk, (to wit) rector of the rectory [*Or*, vicar of the vicarage] and parish church of ——, in the said Sheriff's county, and within your diocese [*as in the return*]. And in what manner you shall have executed this our writ make appear to us in our said Court, immediately after the execution hereof. And have you there then this writ. Witness (*Conclude as in* No. 313, *ante*).

995.

The writ, directed to the Archbishop, during the vacancy of the Bishop's See (*k*).

Victoria (*&c.: see ante*, No, 313).

To the Right Reverend Father in God (John), by Divine Providence Archbishop of Canterbury, Primate of all England and Metropolitan, greeting:

We command you, that of the ecclesiastical goods of C. D., clerk, in the diocese of ——, which is within the province of Canterbury, as Ordinary of that Church, the Episcopal See of —— now being vacant, you cause to be made (*&c.: Continue as in* No. 994, *ante, to the end of that form*).

996.

Indorsement on the writ (*l*).

Proceed as in No. 967, *ante, to* Levy; *and continue thus:* Levy £—— (*the amount sought to be recovered*), and interest thereon from the —— day of —— (*If of money, insert the date of the order directing payment—If of costs, insert the date of the Taxing Master's certificate*), together with £—— (*m*) for this writ, *&c.*, besides officer's fees, and all other incidental expenses of the execution.

(*k*) Ord. XXIX. 11, and Sched. J. No. 2; and see Dan. Pr. 927, n. (*n*).

(*l*) Braithwaite's Pr. 221.

(*m*) £2 6*s.* 8*d.* is allowed for the writ: see Regul. to Ord. Sched. 2, 4; *post*, Chap. XXXI; but to this must be added the sum paid for the warrant or other authority issued by the bishop, or archbishop, to the officer.

997.

Præcipe for a writ of *sequestrari facias de bonis ecclesiasticis* (*n*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a writ of *sequestrari facias de bonis ecclesiasticis*, directed to the Bishop of ——, against A. B. for not paying (*Continue as in* No. 993, *ante, to the end*).

998.

The writ, after an ordinary sequestration (*o*).

Victoria (*&c.: see ante*, No. 313).

To the Right Reverend Father in God (John), by Divine permission Lord Bishop of ——, greeting :

Whereas by an order made in our Court of Chancery on the —— day of ——, in a certain cause wherein —— is plaintiff, and —— is defendant, it was ordered (*Recite the whole of the mandatory part of the order under which the first commission of sequestration was issued*) : And whereas, in pursuance of the said order of our said Court, we did on the —— day of ——, by a commission issued out of, and under the seal of our said Court, give full power and authority to our commissioners (*name them*), or any two of them, to enter upon (*&c.: recite the mandatory part of the writ*) : And whereas it appears by the return of —— and ——, two of our said commissioners of sequestration, dated the —— day of ——, that the said —— has not any messuages, lands, tenements, or real estate, the rents or profits whereof, or any goods, chattels, or personal estate, which they can detain and sequester as commanded by our said commission, and that the said —— is a beneficed clerk, (to wit) rector of the rectories and parish churches of —— and ——, in the county of ——, within your diocese ; and he persisting in his contempt, it was by another order of our said Court, made in the said cause on the —— day of ——, ordered that a commission of sequestration should issue directed to you the said Lord Bishop of ——, commanding you to enter into (*&c. : recite the mandatory part of the order for this writ of sequestration*) : Now therefore we command you, that you enter into the said rectories and parish churches of —— and ——, in the said county of ——, and take and sequester the same into your possession, and also all the rents, tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese, of the said ——, and that you hold the same in your possession until the said —— shall pay the said sum of (*&c. : as in the order*), clear his contempt, and our said Court make other order to the contrary (*p*). Witness (*&c. : Continue as in* No. 313, *ante*).

(*n*) See Braithwaite's Pr. 242, 243. As to an ordinary sequestration, on final process, see *ante*, No. 943, *et seq.*

(*o*) Braithwaite's Pr. 242.

(*p*) As to the powers of a sequestrator, see 12 & 13 Vic. c. 67; Chitty's Arch. 1285.

999.
The writ, after a *fieri facias*, or *elegit* (*q*).

Proceed as in No. 998, *ante, to* greeting:

Whereas we lately commanded our Sheriff of ——, that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause (to be made, *if after the return to a fieri facias—Or*, delivered, *if after the return to an elegit, &c.—and, in either case, recite the former writ*): And whereupon our said Sheriff of ——, on —— [*Or*, at a day past], returned to us in our said Court of Chancery that the said C. D. was a beneficed clerk, that is to say, rector of the rectory [*Or*, vicar of the vicarage] and parish church of ——, in the county of ——, and within your diocese, and that he had not any goods and chattels, or any lay fee, in his bailiwick (*Here follow the words of the sheriff's return*): Therefore we command you, that you enter into the said rectory [*Or*, vicarage] and parish church of ——, and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said £——, and interest aforesaid, of the rents, tithes, rent charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese, of and belonging to the said rectory [*Or*, vicarage] and parish church of ——, and to the said C. D. as rector [*Or*, vicar] thereof: to be rendered to the said A. B. And what you shall do therein make appear to us in our said Court immediately after the execution hereof. And have you there then this writ. Witness (*Conclude as in* No. 313, *ante*).

1000.
Indorsement thereon (*r*).

Indorse the writ as a *fieri facias: see ante*, No. 967, *et seq.*; but add: "of the execution and sequestration."

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4. *Committal to Prison, under section* 5 *of the Debtors' Act*, 1870 (*s*).

1001.
Notice of motion, to commit debtor to prison (*t*).

Formal parts: see ante, No. 55.

on the part of the plaintiff C. D.,

Or, defendant C. D.—*Or*, C. D., named in the decree [*Or*, order] hereinafter mentioned,

that the defendant A. B.

Or, plaintiff A. B.—*Or*, A. B., named in the decree [*Or*, order] hereinafter mentioned,

may be ordered to pay to the said C. D. his costs of and incident to this application, and of the order to be made thereon; and that the said A. B., for default in payment of the sum of

(*q*) Ord. XXIX. 11, and Sched. J. No. 3.

(*r*) This appears to be the meaning of the note to Sched. J. No. 3.

(*s*) 32 & 33 Vic. c. 62; and see Ord. 7 Jan. 1870, rr. 10—18, and Sched.; Dan. Pr. 928—930.

(*t*) See Ord. 7 Jan. 1870, r. 10; Dan. Pr. 928. For the practice on injunctions, see *post*, Chap. XXXVI.

£——, mentioned in the decree [*Or*, order] made in this cause [*Or*, matter], dated the —— day of ——, 187—, may be committed to prison for the term of six weeks from the date of his arrest, including the day of such date: unless he shall sooner pay the said sum of £——, and Sheriff's fees for the execution of the order to be made hereon, and the said costs of the said C. D. [*or as may be* (*u*)].

1002.

Affidavit in support.

Formal parts: see ante, No. 9.

(1.) *Prove service of the decree or order to pay on the person making default, and default made by him: see ante*, Nos. 929, 930.

(2.) *Show that such person either has, or has had since the date of the decree or order, the means to pay the sum in respect to which he has made default, and has refused or neglected, or refuses or neglects, to pay the same; and show means of knowledge.*

(3.) *Prove service of the notice of motion: see ante*, No. 47.

1003.

Order of committal to prison, determinable on payment of the whole amount due (*v*).

Upon motion, *&c.*

This Court doth order, that the said A. B. do pay to the said C. D. [the sum of £——, as and for] his costs of and incident to this application and this order; and further that the said A. B., for default in payment of the sum of £—— mentioned in the said decree [*Or*, order] of the —— day of ——, 187—, be committed to prison for the term of six weeks from the date of his arrest, including the day of such date, unless he shall sooner pay the said sum of £——, and the Sheriff's fees for the execution of this order (*x*), and the costs hereinbefore directed to be paid [*Or*, and the said sum of £—— for costs]. And it is ordered, that any Sheriff or officer to whom an office copy of this order shall be delivered, after being directed to him by the Clerks of Records and Writs (*y*), do take the said A. B. for the purpose aforesaid, if he be found within his bailiwick.

1004.

The like, on payment by instalments (*z*).

Upon motion, *&c.*

This Court doth order, that the said A. B. do pay to the said C. D. [the sum of £——, as and for] his costs of and incident to this application and this order; and further that the said A. B., for default in payment of the sum of £—— mentioned in the

(*u*) See *post*, Nos. 1003, 1004.

(*v*) See the Debtors' Act, 1869 (32 & 33 Vic. c. 62), s. 5; Ord. 7 Jan. 1870, rr. 13—16, and Sched. A. 1, 2; Dan. Pr. 928, 929.

(*x*) As to the Sheriff's fees, see Ord. 7 Jan. 1870, r. 15; Chitty's Arch. 1776, *et seq.*

(*y*) For forms of directions, see *ante*, No. 308.

(*z*) See notes to No. 1003, *ante*.

said decree [*Or*, order] of the —— day of ——, 187—, be committed to prison for the term of six weeks from the date of his arrest, including the day of such date, unless he shall sooner pay the Sheriff's fees for the execution of this order, and the costs hereinbefore directed to be paid [*Or*, and the sum of £—— hereinbefore directed to be paid for costs], and the sum of £——, part of the said sum of £——. And it is ordered, that the said A. B. do pay [*State to whom, or to what account, to be paid*] the sum of £——, the residue of the said sum of £——, by —— equal instalments on [*State times of payment*]. And it is ordered that any Sheriff or officer to whom an office copy of this order shall be delivered, after being directed to him by the Clerks of Records and Writs, do take the said A. B. for the purpose aforesaid, if he be found within his bailiwick.

1005. Certificate of payment (*a*).

A. *v.* B.

[*Or*, In the matter of ——.]

I certify that A. B., now in the gaol of ——, upon an order of the High Court of Chancery, dated the —— day of ——, 187—, made in the above cause [*Or*, matter] until payment of £——, has paid the said sum, together with the [sum of £—— for the] costs mentioned in the said order, and Sheriff's fees.

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5. *Process against Peers and Members of Parliament* (*b*).

1006. Motion paper, for a sequestration *nisi* (*c*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for a sequestration *nisi* against the defendant A. B. [*or as may be*]: who is a peer [*Or*, M.P.]: for breach of the decree [*Or*, order] dated the ——, 187—.

The decree [*Or*, order], and an affidavit of service and default, accompany.

(*a*) See the Debtors' Act, 1870 (32 & 33 Vic. c. 62), s. 5; Ord. 7 Jan. 1870, r. 17, and Sched. B.; Dan. Pr. 930. The certificate is to be signed by the solicitor of the person prosecuting the decree, or order, which has been disobeyed, or, if such person be acting in person, then be signed by him and attested by a solicitor or justice of the peace: Ord. 7 Jan. 1870, r. 17; Dan. Pr. 930. As to an attachment, on default in payment of instalments after a discharge from prison, see Ord. 7 Jan. 1870, r. 18; Dan. Pr. 930; and see *ante*, No. 931, *et seq.*

(*b*) See Dan. Pr. 930, 931. For a table of process against a peer or M.P., see Seton, 1240, 1241. As to the process for nonpayment of costs, see *post*, Chap. XXXI.

(*c*) See Dan. Pr. 931. For order in like case, see Seton, 1225, No. 1. As to sequestration for breach of decree or order in ordinary cases, see *ante*, No.

1007.
Affidavit in support (*d*).

The same as Nos. 929, 930, *ante*.

1008.
Motion paper, for substituted service of the order *nisi* (*d*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that service of the order dated ——, 187—, for a sequestration *nisi* against the defendant A. B. [*or as may be*]: who is a peer [*Or*, M.P.]: for breach of the decree [*Or*, order] dated ——, 187—, upon (*State proposed mode of service: see ante*, No. 927), may be deemed good service on the said A. B.

The order, and an affidavit in support, accompany.

1009.
Affidavit in support (*d*).

The same as No. 928, *ante*.

1010.
Motion paper, for a sequestration absolute (*e*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the order dated ——, 187—, for a sequestration against the defendant A. B. [*or as may be*], may be made absolute.

The order, and an affidavit of service thereof, accompany.

1011.
Affidavit in support (*e*).

The same as No. 48, *ante*.

1012.
The sequestration (*f*).

Præcipe: The same as No. 330, *ante:* describing the contempt correctly; as thus: "For not paying the sum of £1,000 to C. D."

The writ:
Indorsement: } The same as Nos. 331, 332, *ante*.

943, *et seq.* As to sequestration against a privileged person for want of appearance, see *ante*, No. 325, *et seq.*; or answer, *ante*, No. 422, *et seq.*

(*d*) See Dan. Pr. 931.

(*e*) *Ibid.* For order in like case, see Seton, 1226, No. 11. The Registrar's certificate of no cause shown must be produced in Court, or to the Registrar: Dan. Pr. 931.

(*f*) See Dan. Pr. 931; and notes to Nos. 330—332, *ante*.

1013.
By writs of *fieri facias*, and *elegit* (*g*).

The same as Nos. 965—982—992, *ante*.

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6. *Process against a Corporation Aggregate* (*h*).

1014.
Distringas (*i*).

Præcipe: } The same as Nos. 335, 337, *ante:* describing
Indorsement: } the contempt correctly; as thus: "For not paying the sum of £500 to C. D."

The writ:
Alias distringas: } The same as Nos. 336, 338, 339, *ante*.
Pluries distringas:

1015.
Motion paper, for a sequestration *nisi* (*k*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for an order *nisi* for a sequestration against the defendants the D. Company [*or as may be*], for breach of the decree [*Or*, order], dated ——, 187—: on the Sheriff's return to a writ of *distringas*.

The decree [*Or*, order], and the Sheriff's return, accompany.

1016.
Affidavit in support (*l*).

The same as Nos. 929, 930, *ante;* but show that the service was effected on an officer of the corporation.

1017, 1018.
Motion paper, for a sequestration absolute, and affidavit in support (*l*).

The same as Nos. 1010, and 48, *ante*.

(*g*) See Dan. Pr. 931; and notes to Nos. 965—992, *ante*.

(*h*) See Dan. Pr. 931. For a table of process against a corporation aggregate, see Seton, 1241. As to the process for non-payment of costs, see *post*, Chap. XXXI.

(*i*) See Dan. Pr. 931, and notes to Nos. 335—339, *ante*. For an *alias*, and a *pluries distringas*, against a corporation aggregate, for not filing an affidavit of documents, see *Hanslip* v. *Norwich and Spalding Railway Company*, 26 Jan. 1864, Reg. Lib. A. 72; 11 Feb. 1864, Reg. Lib. A. 209.

(*k*) See Dan. Pr. 932. As to sequestration for breach of a decree or order, in ordinary cases, see *ante*, No. 943, *et seq.*; and against a corporation aggregate, for want of appearance, see *ante*, No. 340, *et seq.*; or answer, No. 434, *et seq.*

(*l*) See Dan. Pr. 932; and notes to Nos. 929, 930, *ante*.

1019.
The sequestration (*m*).

Præcipe: The same as No. 330, *ante:* describing the contempt correctly; as thus: "For not paying the sum of £500 to C. D."

The writ: } The same as Nos. 331, 332, *ante.*
Indorsement: }

1020.
By writs of *fieri facias*, and *elegit* (*n*).

The same as Nos. 965—982—992, *ante.*

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7. *Enforcing, in the Chancery of Ireland, a decree or order of the Chancery of England* (*o*).

1021.
Petition of course, for exemplification of a copy of the decree or order (*p*).

Title—and address to the L. C.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. By a decree [*Or*, an order] made by your lordship [*or as may be*], in this cause, dated the —— day of ——, 187—, it was (*If so:* amongst other things) ordered that (*Recite so much of the decree or order as is sought to be enforced in Ireland; as thus:* the defendant A. B. should pay to your petitioner the sum of £1000; and also your petitioner's costs of this suit: to be taxed by the Taxing Master; and which costs have since been taxed by the Taxing Master at the sum of £100: as appears by his certificate dated the —— day of ——, 187—).

2. The said (defendant) A. B. is now residing in Ireland; and has been duly served with the said decree [*Or*, order]; but refuses to pay to your petitioner the said sum of £1000 and £100 [*or as may be*].

3. Your petitioner is desirous to enforce obedience to, and performance of, the said decree [*Or*, order], by proceedings in Ireland against the said (defendant); and for that purpose an exemplification of a copy of the said decree [*Or*, order] is necessary.

Your petitioner therefore humbly prays, that a copy of the said decree [*Or*, order] may be exemplified and certified to the Court of Chancery in

(*m*) See Dan. Pr. 932; and notes to Nos. 330—332, *ante.*

(*n*) See Dan. Pr. 932; and notes to Nos. 965—982—992, *ante.*

(*o*) For the practice in England as to exemplifying to the Court of Chancery in Ireland a copy of a decree or order under the 41 Geo. III. c. 90, s. 5, see Dan. Pr. 932, 933; and for the practice in Ireland as to enforcing the execution of decrees and orders, see 1st Rep. Eng. and Ir. Com., App. 87; Blackham's Pr. of Ct. of Ch. Ir. 230, *et seq.;* and where made in England, *ib.* 248, 539.

(*p*) See Dan. Pr. 932. For order in like case, see *De Sorbien* v. *Bland*, L. C. 18 Feb. 1856, Reg. Lib. A. 472: Seton, 1148.

Ireland, under the Great Seal of England, pursuant to the Statute in this behalf.

And your petitioner will ever pray, &c.

1022. Exemplification of copy of the decree or order (*q*).

Victoria (*&c.: see ante*, No. 313).

To all to whom these presents shall come, greeting:

We have inspected a certain decree [*Or*, order] made by us in our Court of Chancery, in the words following: (*Set out, verbatim, the decree, or order: including the name of the Judge by whom it was pronounced, and the initials of the Registrar, and Entering Clerk*):

We, therefore, at the request of the said plaintiff [*or as may be*], have exemplified the said decree [*Or*, order], by these presents; and in testimony thereof have caused these our letters to be made patent. Witness (*&c.: Conclude as in* No. 313, *ante*).

Examined by us (*r*):

E. F. } Clerks of Records
G. H. } and Writs.

I certify the foregoing to the Right Honourable (*Name*), the Lord High Chancellor of Ireland. Dated this —— day of ——, 187—.

(*Signature of Lord Chancellor of Great Britain.*)

1023. Indorsement thereon (*s*).

An exemplification of a decree [*Or*, an order] of the High Court of Chancery in England, dated the —— day of ——, 187—, in a cause wherein A. B. is plaintiff, and C. D. is defendant. Exemplified at the request of the plaintiff [*or as may be*].

(*Name, &c., of solicitor or party requiring the exemplification: see ante*, No. 4, *or* 7.)

1024. Docket of the exemplification (*t*).

An exemplification of a decree [*Or*, an order] of our High Court of Chancery, dated the —— day of ——, 187—, made in a cause wherein A. B. is plaintiff, and C. D. is defendant.

Exemplified at the request of the plaintiff [*or as may be*].

Witness the Queen at Westminster, the —— day of ——, in the —— year of her reign.

ROMILLY, M. R.

(*q*) Braithwaite's Pr. 548; Dan. Pr. 932. The exemplification should be engrossed on parchment, and be stamped with a £3 Inland Revenue stamp: Dan. Pr. 932.

(*r*) See Dan. Pr. 932.

(*s*) Braithwaite's Pr. 549.

(*t*) *Ibid.*; Dan. Pr. 932. The docket and certificate should be written on paper continuously, on one sheet: Dan. Pr. 932, n. (*k*).

1025.
Certificate on the docket (*u*).

To the Right Honourable the Lord High Chancellor of Great Britain.

We humbly certify unto your lordship, that we have carefully examined the exemplification before mentioned, with the decree [*Or*, order] therein mentioned; and that the same is a true exemplification of the said decree [*Or*, order]. Dated this —— day of ——, 187—.

E. F. } Clerks of Records
G. H. } and Writs.

1026.
Indorsement on the docket (*x*).

Docket of
Exemplification
of
a decree [*Or*, an order],
dated —— day of ——, 187—.

A.
v.
B.

ROMILLY, M.R.

(*Add name, &c., of solicitor or party requiring the exemplification: see ante*, No. 4, *or* 7.)

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8. *Enforcing, in the Chancery of England, a decree or order of the Chancery of Ireland* (*y*).

1027.
Motion paper, to enrol the decree or order (*z*).

Title, as in the decree or order—and formal parts of a motion paper before the L.C., or L.JJ.: see ante, No. 53.

To move on behalf of the said A. B. [*or as may be*], that a decree [*Or*, an order] of the Court of Chancery in Ireland, dated the ——, 187—, and a copy whereof has been exemplified and certified under the Great Seal of Ireland, may be enrolled in this Court, pursuant to the 41 Geo. III. c. 90, s. 6.

The exemplified copy accompanies.

(*u*) See Dan. Pr. 933.

(*x*) Braithwaite's Pr. 550.

(*y*) For the practice on this subject, see Dan. Pr. 933, 934; 41 Geo. III. c. 90, s. 6.

(*z*) See Dan. Pr. 933. For order in like case, see Seton, 1148, No. 1; *Pennefather* v. *Short*, L.JJ., 12 Mar. 1866, Reg. Lib. B. 482: W. N. (1866), 102, L.JJ.; *ib.* 126, V. C. W. The enrolment must be made by the Clerks of Records and Writs; and not in the Chancery Inrolment office: S. C., W. N. (1866), 126, V. C. W. In the case cited, a second order to enrol the same Irish order was made by the L. C. on 24 Mar. 1866: see Reg. Lib. B. 600.

1028.
Petition of course, to enrol the decree or order (*a*).

(*Set out the title of the decree or order.*)

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the above named A. B.

Showeth as follows:

1. By a decree [*Or*, an order] made in the above mentioned cause [*Or*, matter] by the High Court of Chancery in Ireland, dated the —— day of ——, 187—, it was (*If so:* amongst other things) ordered that (*Recite so much of the decree or order as is sought to be enforced in England; and state, succinctly, the proceedings taken in Ireland, if any, to enforce the same there; as thus:* the above named C. D. should, on or before the —— day of ——, 187—, pay to your petitioner the sum of £2000, together with accruing interest at £5 per cent. on the sum of £1900 from the —— day of ——, and should also pay the costs of the above cause, when taxed and ascertained, within one month after the same should be duly taxed and certified; and it was referred to the Taxing Master of the said Court in rotation to tax the same. The said costs were accordingly duly taxed and certified by the said Taxing Master at the sum of £100: as appears by his certificate dated the —— day of ——, 187—. The said C. D. was afterwards duly served with a copy of the said decree [*Or*, order], and Taxing Master's certificate. An attachment against the said C. D. for not paying the said sums of principal, interest, and costs was issued out of the said Court on the —— day of ——, 187—, directed to the Sheriff of D.: who has returned *non est inventus* thereto; and the said sums remain due to your petitioner).

2. A copy of the said decree [*Or*, order] has been exemplified and certified under the Great Seal of Ireland, pursuant to the statute in this behalf; and your petitioner is desirous of enforcing performance thereof, and obedience thereto, by the said C. D., in the respect aforesaid, by the process of this honourable Court.

Your petitioner therefore humbly prays, that the said decree [*Or*, order—*If so:* and the said certificate of taxation] may be enrolled on the rolls of this honourable Court.

And your petitioner will ever pray, &c.

1029.
Docket of enrolment of the decree or order (*b*).

Whereas heretofore, that is to say, on or about the —— day of ——, 187—, a certain decree [*Or*, order] was pronounced in the High Court of Chancery in Ireland, in a certain cause petition there depending, wherein A. B. is petitioner, and C. D. is respondent

(*a*) See Dan. Pr. 933; Braithwaite's Pr. 479. This application is usually made by motion.

(*b*) Braithwaite's Pr. 477; and see Dan. Pr. 933. For the practice, generally, as to enrolling decrees and orders, see *ante*, No. 887, *et seq.*, and notes thereto.

[*or as may be*]: which said decree [*Or*, order] hath, in pursuance of an Act of Parliament passed in the 41st year of the reign of his late Majesty King George the Third, chapter ninety, been exemplified and certified to the High and Honourable Court of Chancery in England, under the Great Seal of Ireland; and which said exemplification and certificate are in the words and figures following; that is to say: (*Copy, verbatim, the whole of the exemplification and certificate*): And whereas by an order pronounced in the High Court of Chancery in England in the said cause, by the Right Honourable the Lord High Chancellor of Great Britain, on the —— day of ——, 187—, upon motion, on behalf of [*Or*, upon the petition of] the said A. B. [*or as may be*], it was ordered that the said decree [*Or*, order], dated the —— day of ——, 187—, should be enrolled on the rolls of that Court: It is therefore this present day, that is to say, ——, the —— day of ——, 187— (*c*), by the Right Honourable —— (*d*), Lord High Chancellor of Great Britain, and by the High and Honourable Court of Chancery, and the power and authority thereof, ordered and adjudged that the said decree [*Or*, order] be enrolled on the rolls of this Court; and the same is hereby enrolled accordingly.

I have inspected this docket; and hereby certify that the statement of the exemplification and certificate and order therein contained is correct.
X. Y.,
C. R. & W.
At the request of the said A. B. [*or as may be*].

1030.

Motion paper, for leave to issue an attachment (*e*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., for leave to issue process of attachment against C. D., under the 41 Geo. III. c. 90, s. 6, for not paying the said A. B. £2000 [*or as may be*], pursuant to an order of the Court of Chancery in Ireland dated ——, 187—, and enrolled in this Court under an order dated ——, 187—.

The orders, and an affidavit in support (*f*), accompany.

(*c*) Date of order directing the enrolment.

(*d*) Insert name, &c., of the Lord Chancellor in office at the date of the order directing the enrolment: see *ante*, No. 893, n. (*u*).

(*e*) See Dan. Pr. 934. For order in like case, see *Pennefather* v. *Short*, V. C. W., 7 May, 1866, Reg. Lib. B. 878: W. N. (1866), 126; S. C., *ante*, No. 1027, n. (*z*). The application may be made to the L. C., L.JJ., or a V. C.; but the Master of the Rolls does not appear to have jurisdiction: *Re Scott*, 12 Beav. 361; Dan. Pr. 934. As to when the attachment will be issued without an order of the English Court, see Dan. Pr. 934.

(*f*) In *Pennefather* v. *Short*, *ubi sup.*, the affidavit proved the service of a copy of the Irish order on the defendant, and that the money remained unpaid.

1031.
Præcipe for the attachment (*g*).

In Chancery.

(*Short title.*) Seal an attachment, directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], against C. D., for breach of a decree [*Or*, an order] of the High Court of Chancery in Ireland, dated the —— day of ——, 187—, in a certain matter wherein A. B. is petitioner, and the said C. D. is respondent [*or as may be*], in not (*Recite so much of the mandatory part of the decree or order as directs the payment of the money*): as by the said decree [*Or*, order] the said C. D. was commanded.

Returnable ——.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1032.
The attachment (*g*).

The same as No. 313, *ante*.

1033.
Indorsement thereon (*h*).

By the Court.

For breach of a decree [*Or*, an order] made by the High Court of Chancery in Ireland (*Continue as in* No. 1031, *ante*, *to* commanded: *substituting*, within named C. D. was, *for*, said C. D. was).

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9. *Enforcing, in the Chancery of England, an order of the Landed Estates Court in Ireland* (*i*).

1034.
Motion paper, to enrol the order (*k*).

Commence as in No. 1027, *ante*.

To move on behalf of the said A. B. [*or as may be*], that an order of the Landed Estates Court in Ireland, dated the ——, 18—, and a copy whereof has been certified under the seal of that Court, may be enrolled in this Court, pursuant to the 21 & 22 Vic. c. 72, s. 36.

The certified copy accompanies.

(*g*) Braithwaite's Pr. 176. The order of the Court of Chancery in England must be produced at the time the attachment is presented to be sealed: *ib.* As to attachments for breach of decree or order of the English Chancery, see *ante*, No. 931, *et seq.*, and notes thereto.

(*h*) Braithwaite's Pr. 176.

(*i*) For the practice on this subject, see Dan. Pr. 933, 934; 21 & 22 Vic. c. 72, s. 36; and see 41 Geo. III. c. 90, s. 6; and *ante*, Nos. 1027—1033, and notes thereto. As to the Landed Estates Court, see also 29 & 30 Vic. c. 99. As to enrolling and enforcing, in England, orders of the late Commissioners for the Sale of Encumbered Estates in Ireland, see Braithwaite's Pr. 177, 481, 483.

(*k*) See Dan. Pr. 933.

1035.

Petition of course, to enrol the order (*l*).

Proceed as in No. 1028, *ante, to* as follows:

1. By an order made in the above matter, by the Landed Estates Court in Ireland, and dated the —— day of ——, 18—, it was (*If so:* amongst other things) ordered that (*Recite so much of the order as is sought to be enforced in England; and state, succinctly, the proceedings taken in Ireland, if any, to enforce the same there: see ante*, No. 1028).

2. A copy of the said order has been certified under the seal of the said Landed Estates Court, pursuant to the statute (*Continue as in* No. 1028, *ante, to the end*).

1036.

Docket of enrolment of the order (*m*).

Whereas heretofore, that is to say, on or about the —— day of ——, 18—, a certain order was pronounced by the Landed Estates Court in Ireland, in the matter of (*Insert the full title of the matter, as set forth in the order*): which said order has, in pursuance of an Act of Parliament passed in the 21st and 22nd years of the reign of her present Majesty, chapter 72, been certified to the High and Honourable Court of Chancery in England, under the seal of the said Landed Estates Court; and which said order is in the words and figures following; that is to say: (*Copy, verbatim, the whole of the order*): And whereas, by an order pronounced in the High Court of Chancery in England (*Continue as in* No. 1029, *ante, to* enrolled accordingly).

I have inspected this docket; and hereby certify that the statement of the orders therein contained is correct.

X. Y.,
C. R. & W.
At the request of the said ——.

1037.

Motion paper, for leave to issue an attachment (*n*).

Formal parts: see ante, No. 53.

To move on behalf of C. D., for leave to issue process of attachment against A. B., under the 21 & 22 Vic. c. 72, s. 36, for (*Describe the breach*), pursuant to an order of the Landed Estates Court in Ireland, dated ——, 18—, and enrolled in this Court under an order dated ——, 187—.

The orders, and an affidavit in support, accompany.

(*l*) See Dan. Pr. 933.

(*m*) See Braithwaite's Pr. 480; and notes to No. 1029, *ante*.

(*n*) See Dan. Pr. 934. As to the Judge to whom the application may be made, see *ante*, No. 1030, n. (*e*).

1038. *Præcipe* for the attachment (*o*).

In Chancery.

(*Short title.*) Seal an attachment directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], against A. B., pursuant to an order made by the Landed Estates Court in Ireland, dated the —— day of ——, 18—, in a certain matter intituled, In the matter of (*Set forth the title, verbatim, as in the order*), in not (*Describe the breach*).

Returnable ——.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1039. The attachment (*o*).

The same as No. 313, *ante*.

1040. Indorsement thereon (*p*).

By the Court.

For breach of an order made by the Landed Estates Court in Ireland (*Continue as in* No. 1038, *ante, to the end*).

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10. *Enforcing a decree or order of the Court of Chancery of the County Palatine of Lancaster* (*q*).

1041. Motion paper, to make the decree or order an order of the High Court (*r*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., that the decree [*Or*, order] of the Court of Chancery of the County Palatine of Lancaster, dated the ——, 187—, may be made an order of this Court.

If as to part only, specify what part; as thus: as against the several persons who are named in the second column of the schedule hereunto annexed.

A transcript of (part of) the decree [*Or*, order], and an affidavit in support, accompany (*s*).

(*o*) See Braithwaite's Pr. 177; and note to No. 1031, *ante*.

(*p*) See Braithwaite's Pr. 177.

(*q*) See the Court of Chancery of Lancaster Act, 1850 (13 & 14 Vic. c. 43), s. 15; extended by the Court of Chancery of Lancaster Act, 1854 (17 & 18 Vic. c. 52), s. 10, to orders of the Appeal Court of the County Palatine; and see Dan. Pr. 934.

(*r*) For order in like case, see *Re Liverpool and Dublin Steam Navigation Company, Limited*, V. C. W., 4 Dec. 1866, Reg. Lib. B. 2461. The order was intituled, "In the matter of the Companies Act, 1862—In the matter of the Court of Chancery of Lancaster Act, 1850—In the matter of the Court of Chancery of Lancaster Act, 1854—And in the matter of the *Liverpool and Dublin Steam Navigation Company, Limited*."

(*s*) The application must be supported by the production of a transcript of

1042.
Affidavit in support (*t*).

Formal parts: see ante, No. 9.

1. *Show that the decree or order, or the part thereof sought to be enforced, cannot be enforced by the Court of Chancery of the County Palatine of Lancaster, by reason of the party, against whom the same is sought to be enforced, having withdrawn his person or goods out of, or of his non-residence within, the jurisdiction of that Court; and that he is bound by the decree or order.*

2. *Show means of knowledge.*

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11. *Enforcing a decree or order of the Vice-Warden of the Stannaries* (*u*).

1043.
Motion paper, to make the decree or order an order of the Court of Chancery (*x*).

Title, as in the decree or order—and formal parts of a motion paper: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the decree [*Or*, order] of the Court of the Vice-Warden of the Stannaries, made in this cause, and dated ——, 187—, may be made an order of the High Court of Chancery, pursuant to the 18 & 19 Vic. c. 32, s. 10.

The Registrar's certificate of the decree [*Or*, order], and an affidavit in support, accompany (*y*).

1044.
Summons for the like (*z*).

(*Title, as in the decree or order.*)

Let all parties (*&c.: Continue as in* No. 60, *ante, to* hearing), of an application on the part of the above named plaintiff [*or as may be*], that the decree [*Or*, order] made in the above mentioned

the decree or order—or of such part thereof as cannot be enforced—under the signature of the Registrar of the Court of Chancery of Lancaster; and an affidavit that the decree or order, or such part thereof, cannot be enforced: see *post,* No. 1042.

(*t*) See Dan. Pr. 934.

(*u*) For the practice on this subject, see Dan. Pr. 934, 935; 18 & 19 Vic. c. 32, s. 10.

(*x*) See Dan. Pr. 934; and Seton, 1148, No. 3.

(*y*) The application must be supported by a certificate from the Registrar of the Court of the Vice-Warden, under the seal of that Court, of the decree or order, or of such part thereof as cannot be enforced by that Court; and a satisfactory affidavit of the ground of the application: 18 & 19 Vic. c. 32, s. 10; Dan. Pr. 935.

(*z*) *Ibid.* For order in like case, see *Poppelwell* v. *Wright,* M. R. at Chambers, 12 June, 1857, Reg. Lib. B. 1257.

cause, by the Court of the Vice-Warden of the Stannaries, dated the —— day of ——, 187—, whereby it was ordered that (*Recite the mandatory parts sought to be enforced*), may be made an order of this Court, pursuant to the 18 & 19 Vic. c. 32, s. 10. Dated (*&c.: Conclude as in* No. 60, *ante*).

12. *Enforcing orders made by the Ecclesiastical Courts* (*a*).

1045. Docket of enrolment of an order of an Ecclesiastical Court made in England (*b*).

Whereas heretofore, that is to say, on the —— day of ——, 187— (*date of significavit or exemplification*), an exemplification of a certain order pronounced in the Ecclesiastical Court in England was duly certified under the seal of the said Court to the Lord High Chancellor of Great Britain, pursuant to an Act of Parliament made and passed in the 2nd and 3rd years of the reign of his late Majesty King William the Fourth, intituled, "An Act for enforcing the process upon contempts in the Courts Ecclesiastical of England and Ireland;" and which exemplification is in the words and figures following; that is to say: (*Copy, verbatim, the exemplification and certificate*): And whereas, by an order made by the Right Honourable the Lord High Chancellor of Great Britain, on the —— day of ——, 187—, upon the humble petition of A. B., it was ordered that (*&c.: Recite the mandatory part of the order giving leave to enrol the order made by the Ecclesiastical Court*): It is, therefore, this present day, that is to say, —— the —— day of ——, 187— (*c*), by the Right Honourable —— (*d*), Lord High Chancellor of Great Britain, and by the High and Honourable Court of Chancery, and the power and authority thereof, ordered and adjudged, that the copy of the said order, and the other proceedings hereinbefore referred to, so signified and exemplified as aforesaid, be forthwith enrolled on the rolls of this Court, in pursuance of the before mentioned Act; and the same are hereby enrolled accordingly.

I have inspected (*&c.: Conclude as in* No. 1029, *ante*).

(*a*) See 2 & 3 Will. IV. c. 93, s. 2; Dan. Pr. 933, n. (*o*). Orders, decrees, and judgments of the Court of Probate may be enforced by that Court: see 20 & 21 Vic. c. 77, s. 25; Dodd & Brooks, 831. As to the Ecclesiastical Courts, see Homersham Cox, Inst. Eng. Gov. 567, *et seq.*

(*b*) Braithwaite's Pr. 483, 484.

(*c*) Date of the order giving leave to enrol the order of the Ecclesiastical Court.

(*d*) Insert the name, &c., of the Lord Chancellor in office at the date of the order directing the enrolment: see *ante*, No. 893, n. (*x*).

13. *Enforcing orders under the Companies Act*, 1862 (*e*).

1046.

Motion paper, for order to make order of a Scotch or Irish Court an order of the Court of Chancery (*f*).

Formal parts : see ante, No. 53.

To move on behalf of A. B., that the (*Describe the order ; as thus :* order of the honourable Judge M., one of the Judges of the Court of Bankruptcy and Insolvency in Ireland), made in this cause [*Or*, matter], dated the ——, 187—, may be made an order of this Court.

If as to part only, specify what part ; as thus: as to such of the persons named in the second part of the schedule to the said order as are named in the second column of the schedule hereto annexed.

An office copy of the order accompanies (*g*).

14. *Special Contempts* (*h*).

1047.

Notice of motion, by an officer, suitor, or witness, to be discharged from custody, where protected from arrest (*i*).

Formal parts : see ante, No. 55.

on the part of A. B., of (*Residence and addition*), one of the solicitors of this honourable Court [*or as may be*], that, on the ground of privilege, he may be discharged out of the custody of the Sheriff of Middlesex [*or as may be*], in respect of an attachment issued against him on the —— day of ——, 187—, for breach of the order dated the —— day of——, 187—, and Taxing Master's certificate dated the —— day of ——, 187—, in not paying to C. D. the sum of £——, in the said Taxing Master's certificate mentioned [*or as may be*] : the said A. B. having been, at the time of his said arrest, on his way to attend a summons at, *&c.*, as solicitor on behalf of, *&c.* [*or as may be*].

And that the said C. D., and E. F., esquire, the said Sheriff, and G. H., his officer may be ordered to pay to the said A. B. his costs occasioned by the execution of the said attachment, and of this application and consequent thereon.

(*e*) 25 & 26 Vic. c. 89, ss. 122, 123; Dan. Pr. 935.

(*f*) For order in like case, see *Re Hollyford Copper Mining Company, Limited*, L. J. G., 11 Dec. 1869, Reg. Lib. A. 3081 : Law Rep. 5 Ch. 93; Dan. Pr. 935; and see, *ante*, No. 1041, n. (*r*).

(*g*) The motion must be supported by production of an office copy of the order of the foreign Court : Dan. Pr. 935.

(*h*) See Dan. Pr. 936—938; Ord. XLII. 1, 2.

(*i*) See Dan. Pr. 936. For orders in like case, see *Dodd* v. *Holbrook*, V. C. W., 9 Oct. 1865, Reg. Lib. A. 2059; V. C. S., 6 Dec. 1865, Reg. Lib. A. 2348 : 11 Jur. N. S. 969 : 12 *ib.* 19 : 14 W. R. 125. As to the protection afforded to officers, suitors, and witnesses from arrest, see Dan. Pr. 935, 936. As to the privilege and practice at law, see Chitty's Arch. 780, *et seq.*

1048.
Motion paper, for an order *nisi*, for committal for a contempt of Court (*k*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff [*or as may be*], for an order *nisi* that the defendant A. B. [*or as may be*] may be committed to prison, for a contempt of this Court in (*State nature of contempt*).

1048a.
Order *nisi*, for committal for an alleged contempt taken notice of by the Court itself (*l*).

(*Name of Judge—Date—and Title.*)
Upon reading an affidavit of A. B., of, *&c.*, filed in this matter on, *&c.*, and the exhibits marked A & B therein referred to: the said exhibit A being, *&c.*, and the said exhibit B being, *&c.*: And it appearing from the said affidavit that, *&c.*: and the (*Judge*) taking notice of the circumstances stated in the said affidavit, and being of opinion that, in case such circumstances are proved, the said C. D. has been guilty of misbehaviour and of a contempt of this Court, doth order, that the said C. D., having personal notice hereof, do attend his lordship at the sitting of this Court, at the hour of ten in the morning, on the —— of ——, and do then show cause to this Court why he should not stand committed to (the City of London prison at Holloway).

1049.
Notice of motion, for committal for a contempt of Court (*m*).

Formal parts: see ante, No. 55.
on the part of the plaintiff [*or as may be*], that the defendant A. B. [*Or*, A. B., of (*residence and addition*)], may be committed to prison for a contempt of this honourable Court, in (*State what; as thus*: writing and procuring to be published, in a newspaper called "The Times," of the —— day of ——, instant, a certain letter signed X. Y.).

1050.
Notice of motion, for discharge from a special contempt of Court (*n*).

Formal parts: see ante, No. 55.
on the part of (the defendant) A. B., now a prisoner in the City of London prison at Holloway, by virtue of an order dated, *&c.*, for the contempt therein mentioned of this honourable Court [*or as may*

(*k*) See Dan. Pr. 937.

(*l*) *Re Constantinople and Alexandra Hotel Companies, Limited*, M. R., 21st July, 1870, Reg. Lib. A. 1867; and for further order, refusing to make absolute the order *nisi*, but directing the alleged contemnor to pay the costs, see S. C., M. R., 1 Aug. 1870, Reg. Lib. A. 2416; and see Dan. Pr. 937.

(*m*) See Dan. Pr. 937. For order for committal, on special motion, see *Price* v. *Hutchinson*, V. C. M., 16 Dec. 1869, Reg. Lib. B. 2992: Law Rep. 9 Eq. 534; and for order for discharge of the contemnor, see No. 1050, *post*.

(*n*) See Dan. Pr. 938. For order in like case, see *Price* v. *Hutchinson*,

be], that, upon payment or tender by him of the costs of his said contempt, he may be discharged from the custody of the keeper of the said prison [*or as may be*], touching his said contempt.

V. C. M., 12 Jan. 1870, Reg. Lib. B. 7 : Law Rep. 9 Eq. 537; and see Seton, 1239. For the manner in which contempts in process may be cleared, waived or discharged, see *ante*, Nos. 453—458, and notes thereto.

CHAPTER XXVII.

TRIALS OF QUESTIONS OF FACT, AND ASSESSMENTS OF DAMAGES (*a*).

SECTION I.—IN WHAT CASES DIRECTED (*b*).

1051. Notice of motion, that a question *devisavit vel non* may be tried before the Court (*c*).

Formal parts: see ante, No. 55.
on the part of the plaintiff [*Or*, defendant A. B.], that the following question may be tried by a jury before the Court itself [*Or*, before the Court itself, without a jury], that is to say :—

> Whether the paper writing, dated the —— of ——, 187—, in the pleadings mentioned, purporting to be the last will and testament of C. D., of, *&c.*, is or is not the last will and testament of the said C. D. [*or as may be*].

1052. Summons for leave to pay money into Court in respect of damages (*d*).

Formal parts: see ante, No. 60.
on the part of the defendant A. B., that he may be at liberty to pay into the bank, with the privity of the Accountant-General, to the credit of A. *v.* B. (187—, A. No. —), the sum of £——, in satisfaction [*or as may be*], of the damages in the order in this cause, dated the —— of ——, 187—, mentioned.

SECTION II.—TRIALS AND ASSESSMENTS BEFORE THE COURT ITSELF, BY OR WITHOUT A JURY (*e*).

1053. Order for the trial of questions of fact by a jury, before the Court itself (*f*).

(*Date—Title—and Introduction.*)—His lordship doth order, that the following questions of fact be tried by a jury, before his honour the Vice-Chancellor S. ; namely :—

1. Was the plaintiff, J. Y., the true and first inventor of

(*a*) As to these subjects, see, generally, Dan. Pr. 939—1018; 21 & 22 Vic. c. 27 ; 25 & 26 Vic. c. 42 ; Ord. XLI. 26—52. For a collection of forms of orders for the trial of questions of fact, assessments of damages, and issues, see Seton, 970, *et seq.*

(*b*) See Dan. Pr. 939—948.

(*c*) *Ibid.* 945. For order in like case, see Seton, 983, No. 1.

(*d*) See Dan. Pr. 948 ; Ord. XLI. 40. As to the mode of paying money into Court, see Dan. Pr. Chap. XL. ; and see *post*, Chap. XL.

(*e*) See Dan. Pr. 949—980. For forms of orders in like cases, see Seton, 970, 971.

(*f*) *Young* v. *Fernie*, L. C. (on appeal), 21 Dec. 1863, Reg. Lib. B. 2601 : 1 De G. J. & S. 353 : 10 Jur. N. S. 58.

the invention for which the letters patent of the 17th day of October, 1850, in the bill in this cause mentioned, were granted to the said J. Y. ?

2. Was the said invention new within the United Kingdom of Great Britain and Ireland, at the date of the said letters patent ?

3. Did the specification, enrolled in pursuance of the said letters patent, particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed ?

4. Have the defendants, or any or either of them, wrongfully, and in contravention of the said letters patent, used the said invention ?

And it is ordered that such questions be tried by a special jury.

And it is ordered that the plaintiffs do, forthwith, deliver to the solicitors for the defendants, particulars in writing of the breaches on which they intend to rely on the trial of such questions ; and that the defendants do, within five days of the delivery of the particulars of breaches, deliver to the solicitors for the plaintiffs particulars in writing of the objections on which the defendants intend to rely, on the trial of the same questions.

And it is ordered that the parties be at liberty to read the depositions and examinations made and taken in this cause of such of the witnesses as, upon the trial of the said questions, shall be proved to be dead, or unable to attend to be examined : saving all just exceptions.

And it is ordered that the plaintiffs and defendants be, respectively, at liberty to sue out *subpœnas* to compel the attendance of such witnesses as they may require to give evidence on the said trial.

And any of the parties are to be at liberty to apply to his honour the Vice-Chancellor S., as they shall be advised.

1054.

Further order, by consent, that the questions be tried before the Court itself, without a jury (*g*).

(*Date—Title—and Introduction.*)—This Court doth (by consent) order, that the said order of the 21st day of December, 1863 (*h*), be varied so far as regards the direction that the questions in the said order mentioned should be tried by his honour with a special jury ; and, instead thereof, it is ordered that such questions be tried by his honour without a jury.

And it is ordered that this cause be set down, and be in the paper for hearing on the same day as the said questions shall be appointed to be tried, after the trial of the said questions.

(*g*) *Young* v. *Fernie*, V. C. S., 15 Jan. 1864, Reg. Lib. B. 227.

(*h*) See *ante*, No. 1053.

1055. Record for trial, of a question or questions of fact (*i*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

By an order made in this cause [*Or*, matter], dated the —— day of ——, 187—, the Court hath directed that the following question [*Or*, questions] of fact be tried by a jury before the Court itself [*Or*, before the Court itself without a jury], that is to say :—

Whether, &c. (*j*).

1056. Record for trial, as to amount of damages (*k*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Whereas by an order made in this cause [*Or*, matter], dated the —— day of ——, 187—, the Court hath awarded damages to the plaintiff [*or as may be*], in respect of the matters in the said order mentioned, and hath directed that the amount of such damages shall be assessed by a jury before the Court itself [*Or*, before the Court itself without a jury].

The question is, what amount of damages the plaintiff [*or as may be*] hath sustained by reason of the matters in the said order mentioned.

1057. Certificate, that the record has been filed (*l*).

Formal parts: see ante, No. 270.

These are to certify, that the Record for Trial of questions of fact [*Or*, as to the amount of damages] by [*Or*, without] a jury, in this cause [*Or*, matter], was regularly filed on the —— day of ——, 187—, as appears by my book.

1058. Summons, to fix a day for the hearing (*m*).

Formal parts : see ante, No. 60.

on the part of the plaintiff [*or as may be*], that a day may be fixed for the trial by a jury before the Court [*Or*, for the trial before the Court without a jury], directed by the order dated the ——, 187—.

(*i*) See Dan. Pr. 949; Ord. XLI. 26, and Sched. N., No. 1. For a record, on a question of fact tried before the Court without a jury, see *Sayers* v. *Sturt* (1865, S. No. 274), M. R.—Record filed 14 Feb. 1868. The record must be copied on paper of the same description and size as that on which bills are printed, and be filed at the Record and Writ Clerks' office : Ord. XLI. 26, as varied by Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. As to the transmission of the record and jury panel (if any) to the Registrar on the day of trial, and as to leaving a copy for the Judge, see Dan. Pr. 953; Ord. XLI. 41.

(*j*) If more questions than one, number them consecutively, 1, 2, 3, &c.

(*k*) See Dan. Pr. 949; Ord. XLI. 26, and Sched. N., No. 2; and n. (*i*), *sup.*

(*l*) See Dan. Pr. 949. As to filing the record, and setting it down for trial, see *ib.*; Ord. XLI. 26, 28.

(*m*) See Dan. Pr. 949; Ord. XLI. 28. For order fixing a day, see Seton,

1059.

Motion paper, for a special jury (*n*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for an order directing the Sheriff of Middlesex [*or as may be*] to summon a special jury, for the trial, before the Lord Chancellor, at his Court in Lincoln's Inn Hall [*or as may be*], on (*State when*), of the question [*Or*, questions] of fact [*Or*, as to the amount of damages], by the order dated ——, 187— (and order dated ——, 187—), directed to be tried (*If so :* by such jury).

1060.

Petition of course, for the like (*n*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows :

1. *Recite order directing the trial ; as thus :* By an order made in this cause [*Or*, matter], dated the —— day of ——, 187—, the Court has directed that a certain question [*Or*, certain questions] of fact [*Or*, as to the amount of damages] therein mentioned shall be tried by a (*If so :* special) jury of the county of Middlesex [*or as may be*], before the Lord Chancellor [*or as may be*].

2. By the said order [*Or*, by another order, dated the —— day of ——, 187—] the said question is [*Or*, the said questions are] directed to be tried before the Lord Chancellor [*or as may be*], at his Court in Lincoln's Inn Hall, *&c.*, on the —— day of ——, 187—.

If the Court has not directed a special jury, add : 3. Your petitioner is desirous that the said question [*Or*, questions] shall be tried by a special jury.

Your petitioner therefore humbly prays, that the Sheriff of Middlesex [*or as may be*] may be directed to summon a special jury for the trial of the said question [*Or*, questions] accordingly.

And your petitioner will ever pray, &c.

970, No. 1; the Court sometimes fixes the day, by the order directing the trial : *ib.*

(*n*) See Dan. Pr. 950; Ord. XLI. 30, 31. For forms of orders, directing the trial to be by a special jury, see *ante*, No. 1053; Seton, No. 970, No. 1. As to service of the order on the sheriff, or coroner, see Dan. Pr. 950; Ord. XLI. 30, 31. By the Juries' Act, 1870 (33 & 34 Vic. c. 77), s. 22, every special juror is entitled to £1 1s., and every common juror to 10s., for every day of his attendance : which is to be paid by the parties to the cause ; and for that purpose, each of the parties may be required to deposit in Court such sum of money as may be required by any rule of the Court ; and see Reg. Gen. of all the Common Law Courts, M. T. (25 Nov.), 1870; W. N. (1870), 247.

1061.
Order for a special jury (*o*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Upon motion [*&c.*—*Or*, Upon the humble petition, *&c.*], It is ordered that, at the expense of the plaintiff [*Or*, defendant—*Or*, petitioner—*Or*, respondent] in the first instance (*p*), forty-eight special jurors be nominated by ballot out of the special jurors' list for the county of Middlesex [*or as may be*], of persons qualified to serve on special juries for the said county, and be reduced before the Under-sheriff of the said county; and that twelve of them be struck out by each party, and that the names of the remaining twenty-four be placed on a panel for the trial of a certain question [*Or*, certain questions] of fact,

Or, as to the amount of damages sustained by the plaintiff [*or as may be*],

in this cause [*Or*, matter]; and that the said Sheriff of the said county do cause the said twenty-four jurors to be summoned to attend at the said trial, before the Right Honourable the Lord High Chancellor, in his court at Lincoln's Inn Hall, in the county of Middlesex (*or other Judge before whom, and the Court in which, the trial is to take place*), on the —— day of ——, 187—, at ten of the clock in the forenoon precisely; and that the said Sheriff do also summon twelve common jurors to attend at the said trial on the day and at the time and place aforesaid (*q*). And it is ordered that the said Sheriff and the said jurors do attend accordingly.

1062.
Motion paper, for a common jury (*r*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for an order directing the Sheriff of Middlesex [*or as may be*], to summon a common jury, for the trial before the Lord Chancellor, at his Court in Lincoln's Inn Hall [*or as may be*], on (*State when*), of the question [*Or*, questions] of fact [*Or*, as to the amount of damages] by the order dated the ——, 187—, directed to be tried.

(*o*) See Dan. Pr. 950; Ord. XLI. 30, and Sched. N., No. 4. For the mode and practice of proceeding to nominate and reduce a special jury, see Dan. Pr. 951, 952; Chitty's Arch. 369, *et seq.*; and The Juries' Act, 1870 (33 & 34 Vic. c. 77), ss. 16, 17. As to the mode of summoning special juries in the counties, see Chitty's Arch. 366, 367. As to leaving the order and jury panel with the Record and Writ Clerk, to annex to the record for trial, see Dan. Pr. 952; Ord. XLI. 33.

(*p*) If the special jury is obtained on the application of either party without the special direction of the Court, leave out the words "in the first instance": Ord. Sched. N., No. 4, n.; Ord. XLI. 30, 31.

(*q*) See Dan. Pr. 951; Ord. XLI. 32.

(*r*) See Dan. Pr. 950, 951; Ord. XLI. 29.

1063.
Petition of course, for the like (*s*).

Proceed as in No. 1060, *ante, to the end of par.* 2.

3. No order for the trial of the said question [*Or*, questions] by a special jury has been made.

Your petitioner therefore humbly prays, that the Sheriff of Middlesex [*or as may be*] may be directed to summon a common jury for the trial of the said question [*Or*, questions] accordingly.

And your petitioner will ever pray, *&c.*

1064.
Order for a common jury (*t*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Upon motion [*&c.*—*Or*, Upon the humble petition, *&c.*], It is ordered that the Sheriff of Middlesex do summon a sufficient number of common jurors, for the trial of a certain question [*Or*, certain questions] of fact [*Or*, as to the amount of damages sustained by the plaintiff—*or as may be*], to be tried before (*State whom, where, and when: as in* No. 1061, *ante*). And it is ordered that the said Sheriff do attend with the said jurors accordingly.

1065.
Summons for a view (*u*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that a view may be had of the place in question by the special [*Or*, common] jury summoned and impanelled by the Sheriff of Middlesex [*or as may be*] for the trial of the question [*Or*, questions] directed to be tried by the order dated the ——, 187—; and that such view may be made on —— the —— day of ——, 187—, at —— o'clock in the ——noon at (*State where*): which place is distant —— miles from the office of the Under-sheriff of Middlesex [*or as may be*].

1066.
Order thereon (*x*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Upon the application, *&c.*, It is ordered that the Sheriff of ——

(*s*) See Dan. Pr. 950, 951; Ord. XLI. 29.

(*t*) See Dan. Pr. 950, 951; Ord. XLI. 29, and Sched. N. No. 3. As to leaving the order and jury panel with the Record and Writ Clerk, to annex to the record for trial, see Dan. Pr. 952; Ord. XLI. 33.

(*u*) See Dan. Pr. 952; Ord. XLI. 36. As to a view, see Taylor on Evid. ss. 502—505a; Best on Evid. s. 197. On the hearing of the summons, each party must name a shower for such view: Ord. XLI. 36. At law, an affidavit is required as to the place at which the view is to be made, and the distance, &c., from the Under-sheriff's office; Reg. Gen. H. T. 1853, r. 49; Chitty's Arch. 372. For form of such affidavit, see Chitty's Forms, 216.

(*x*) See Dan. Pr. 952; Ord. XLI. 36, 37, and Sched. N., No. 5. As to the proceedings under an order for a view, see Ord. XLI. 38; Dan. Pr. 952, 953; Chitty's Arch. 371, 372. For form of request on Sheriff for names of viewers, see, at law, Chitty's Forms, 218.

do cause the place in question to be shown to six or more of the jury,

Or, if a special jury, say: six or more of the first twelve jurors,

summoned and impanelled to try the question [*Or*, questions] between the said parties, or as many more of such jurors as he shall think fit: in order that they may take a view of the place in question, on the —— day of —— next, at —— of the clock in the forenoon of the same day; and that the said jurors do meet at the house of I. P., known by the name or sign of ——, at ——, in the county [*Or*, city] of ——, and then and there be refreshed at the equal charge of the said parties; and that S. P. on the part of the plaintiff [*Or*, petitioner], and S. D. on the part of the defendant [*Or*, respondent], do show the place in question to those jurors; but that no evidence be then and there given to the said jurors. And it is ordered that the Sheriff of —— do return the names of such of the said jurors as shall view the said place to the Registrar in the Court of Chancery, for the purpose of their being called as jurymen upon the trial of the said question [*Or*, questions]. And it is further ordered that the plaintiff [*Or*, defendant—*Or*, petitioner—*Or*, respondent], his solicitor or agent, do deposit in the hands of the Under-sheriff of the said county, the sum of £—— for payment of the expenses of the same view, pursuant to the General Order of Court in that behalf made (*y*); and that if such sum shall be more than sufficient to pay the expenses of the said view, the surplus be forthwith returned to the plaintiff's [*Or*, defendant's—*Or*, petitioner's—*Or*, respondent's] solicitor; and if such sum shall not be sufficient to pay such expenses, the deficiency be paid forthwith by such solicitor to the said Under-sheriff: the plaintiff [*Or*, defendant—*Or*, petitioner—*Or*, respondent], by his solicitor, consenting, that in case no view

(*y*) By Ord. XLI. 37, the sum to be deposited in the hands of the Under-sheriff is £10 in the case of a common jury, and £16 in case of a special jury: if the distance from the Under-sheriff's office to the place to be viewed does not exceed five miles; and £15 in case of a common jury, and £21 in case of a special jury, if it is above five miles; and the Under-sheriff is to pay and account for the money deposited, according to the following scale: For travelling expenses to the Under-sheriff, showers, and jurymen, expenses already paid, if reasonable.—Fee to the Under-sheriff where the distance does not exceed five miles from his office, £1 1*s.*—Where such distance exceeds five miles, £2 2*s.*—And in case he shall be necessarily absent more than one day, then for each day after the first, a further fee of £1 1*s.*—Fee to each of the showers: the same as the under sheriff: calculating the distance from their respective places of abode.—Fee to common juryman, per diem, 5*s.*—For each special juryman, per diem, £1 1*s.*—Allowance for refreshment to the Under-sheriff, showers, and jurymen, whether common or special, each per diem, 5*s.*—To the bailiff for summoning each juryman whose residence shall not be more than five miles distant from the office of the Under-sheriff, 2*s.* 6*d.*—And to the bailiff for summoning each juryman whose residence does exceed five miles of such distance, 5*s.*

shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be six or any particular number of the jurors who shall be mutually consented to, yet the said trial shall proceed, and no objection shall be made on account thereof.

1067.

Process to procure the attendance of witnesses in Court (*z*).

The same as Nos. 762—771, *ante:* or as near thereto as the circumstances of each case will admit (*a*).

1068.

Admission of documents (*b*).

The same as Nos. 745—747, *ante.*

1069.

Notice to produce documents (*c*).

Formal parts: see ante, No. 54.

Take notice, that you are hereby required to produce to the Court [*Or,* Court and jury], on the trial of the question [*Or,* questions] in this cause [*Or,* matter], the following documents; that is to say: (*Describe the documents: For forms of description, see ante,* No. 745), and all other deeds, documents, letters, books, papers, and writings whatsoever containing any entry, memorandum, or minute, or other matter, in any wise relating to the said question [*Or,* questions].

1070.

Affidavit of service thereof (*d*).

The same as *ante,* No. 747, par. 1; but substitute "produce," for "admit."

(*z*) See Dan. Pr. 953; and notes to Nos. 762—771.

(*a*) See Ord. XLI. 51.

(*b*) See Dan. Pr. 775, 776, 953; 21 & 22 Vic. c. 27, s. 7; Ord. XLI. 39, and Sched. N., No. 6; and see notes to Nos. 745—747, *ante.*

(*c*) See Dan. Pr. 774, 775, 953. As to the form, effect, and service of a like notice at law, see Chitty's Arch. 323, *et seq.;* Chitty's Forms, 145.

(*d*) See, at law, Chitty's Forms, 147.

1071.
Brief, on a trial before the Court by, or without, a jury (*f*).
(1) Contents.

In Chancery.
(*Name of Judge.*)
(*Full title of the cause or matter, and reference to the record.*)
Brief for the plaintiff [*Or*, defendant—*or as may be*].

RECORD FOR TRIAL.

By an order (*Copy the Record for Trial, verbatim, from these words to the end*).

CASE.

(*Insert the narrative of the case: which should be stated accurately, and with as much conciseness as is consistent with perspicuity, and generally in the order of time at which the events took place; after which, proceed thus:*)

PROOFS (*e*).

To prove that (*Insert the facts as they are to be proved, and add*) Call { (*Insert the name and profession, trade, or business of each witness; and, if the case depends upon the testimony of old people, add also the age.*)

(*Fold the brief longways, and indorse it thus:*)

(2) Indorsement.

In Chancery.
(*Name of Judge by whom the cause is to be tried: see ante*, No. 53.)

Styles v. Brown. } Brief, on trial before the Court by [*Or*, without] a jury.

For the plaintiff [*or as may be*].
Mr. C.

Guas.

Consultation

„
Guas.

With you,
Mr. D.

Consultation fixed for —— the —— of ——, 187—, at —— o'clock, at ——.

This case is appointed for trial by a special [*Or*, common] jury [*Or*, without a jury], before the Lord Chancellor, at his Court in Lincoln's Inn [*Or*, before the Master of the Rolls, at his Court in Rolls' Yard—*or as may be*], on —— the —— of ——, 187—.

(*Add name, &c., of solicitor or party instructing: see ante*, No. 4, *or* 7.)

(*e*) Copies of notices to produce and admit, and any admission thereon, should be annexed to the brief.

(*f*) See Dan. Pr. 953. The directions here given as to the statements of the case and proofs are taken from Chitty's Forms, 220; and see Cole on

1072. Calling the jury (*g*).

Gentlemen of the jury: Answer to your names.

1073. Challenge to the array (*h*).

B. v. D. } And now at this day, to wit on ——, come as well the plaintiff as the defendant, by their respective attornies as aforesaid; and the jurors of the jury impanelled also come. And hereupon the (defendant) challengeth the array of the said panel: because he saith that (*&c.: State the matter of challenge with certainty and precision*). And this he is ready to verify. Wherefore he prayeth judgment, and that the said panel may be quashed.

1074. Oath of triers of challenge to poll, to favour (*i*).

You shall well and truly try whether (*Name of juror challenged*) stands indifferent between the parties to this issue—So help you God.

1075. Oath to be administered to the jurors (*k*).

You shall well and truly try the question [*Or*, questions] between the parties, and a true verdict give according to the evidence—So help you God.

Ejectment, 274; but the form and contents of the brief for a trial before the Court of Chancery, either by or without a jury, will usually depend, in the particular case, on the stage at which the trial is directed; and nothing more than a general guide is here intended. For form of brief on the ordinary hearing of a cause, see *ante*, No. 867. As to the right to begin, examination of witnesses, addresses of counsel to the jury or the Court, arguments on objections taken during the trial, and the summing up by the Judge, see Dan. Pr. 964—977, and the cases and text books there cited; and see Ord. XLI. 43.

(*g*) Oaths in use in Court of Chancery, 7. The panel of the jury is annexed to the record; the names of the jury (both common and special) should be balloted for by the Registrar; and called by him as they are drawn: *ib.*; Ord. XLI. 42. It has not been customary, however, in Chancery, to ballot for a special jury; but to call their names indiscriminately from the panel; and when the trial continues beyond one day, it is usual, at the sitting of the Court, on any subsequent day, to call over the names of the jury: Oaths in use in Court of Chancery, 7.

(*h*) Chitty's Forms, 223; and see Dan. Pr. 962. As to who may be jurors; who are exempt from serving, and how exemption may be claimed; the qualifications of jurors; how jurors are punished for non-attendance; and how called: see Dan. Pr. 954—957: and the Juries' Act, 1870 (33 & 34 Vic. c. 77), ss. 6, 8—10, 12, 16, 19, and Sch. As to the different kinds of challenge, and the trial thereof, see Dan. Pr. 957—963; and as to the forms thereof, see *ib.* 962, n. (*s*).

(*i*) Chitty's Arch. 438; and see Dan. Pr. 963.

(*k*) See Dan. Pr. 963; 21 & 22 Vic. c. 27, s. 4; Ord. XLI. 42, and Sched N., No. 7; Oaths in use in Court of Chancery, 7.

1076. Affirmation of a Quaker juryman (*l*).

I, A. B., being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm, that I will well and truly try the question [*Or*, questions] between the parties, and a true verdict give according to the evidence.

1077. Affirmation of a juryman, under the 30 & 31 Vic. c. 35 (*m*).

I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that I will well and truly try the question [*Or*, questions], between the parties, and a true verdict give according to the evidence.

1078. Oath to be administered to a witness (*n*).

The evidence you shall give to the Court and jury [*Or*, the Court—*as the case may be*], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth—So help you God (*o*).

1079. Oath of a Presbyterian witness, under 1 & 2 Vic. c. 105 (*p*).

I, A. B., swear by Almighty God, and as I shall answer to God at the great day of judgment, that the evidence I shall give to the Court and jury [*Or*, to the Court—*as the case may be*], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

1080. Affirmation of a Quaker witness (*q*).

I, A. B., being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm, that the evidence I shall give to the Court and jury [*Or*, the Court—*as the case may be*], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

(*l*) Oaths in use in Court of Chancery, 7. The witness repeats the words of the affirmation after the Registrar.

(*m*) 30 & 31 Vic. c. 35, s. 8; Oaths in use in Court of Chancery, 8. The Court, or Judge, or other presiding officer or person qualified to administer an oath to a juror, is to be satisfied of the sincerity of the objection of the juryman from conscientious motives to be sworn: 30 & 31 Vic. c. 35, s. 8.

(*n*) See Dan. Pr. 965; Ord. XLI. 42, and Sched. N., No. 8. For forms of oaths by witnesses examined before the Court in other cases, see *ante*, Nos. 772—774, and notes thereto. For the mode of examining and objecting to witnesses, see Dan. Pr. 965—975. As to "adverse" witnesses, see *ib.* 969.

(*o*) When the witness is a Jew, see *ante*, No. 772, n. (*f*).

(*p*) See Oaths in use in Court of Chancery, 9. The witness holds up his right hand, whilst he repeats, after the Registrar, the words of the oath. For other forms, see *ante*, Nos. 774, 783.

(*q*) Oaths in use in Court of Chancery, 8. The witness repeats the words of the affirmation after the Registrar.

1081.
Affirmation by a witness having a conscientious objection to take an oath (*r*).

The witness is to repeat after the Registrar, as follows, verbatim :—I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly and truly affirm and declare, that the evidence I shall give to the Court and jury [*Or*, the Court—*as the case may be*] (*s*), shall be the truth, the whole truth, and nothing but the truth.

1082.
Promise and declaration by a witness, under the Evidence Further Amendment Act, 1869 (*t*).

I solemnly promise and declare, that the evidence given by me to the Court (*u*) shall be the truth, the whole truth, and nothing but the truth.

1083.
Oath of an interpreter of evidence (*x*).

You shall well and truly interpret the oath that shall be administered, and the questions that shall be put, to the witness, as also the evidence he shall give to the Court and jury [*Or*, to the Court—*as the case may be*], touching the matters in question, to the best of your knowledge and belief—So help you God.

1084.
Calling a witness three times, on his *subpœna* (*y*).

A. B.—Come forth and give your evidence in a cause wherein C. D. is plaintiff,

Or, C. D. and another [*Or*, others] are plaintiffs,

and E. F. is defendant,

Or, E. F. and another [*Or*, others] are defendants,

pursuant to your *subpœna*.

1085.
Indorsement of non-appearance on the *subpœna* (*z*).

The witness named A. B. was called three times in open Court to give evidence on his *subpœna*, and did not appear.

Dated the —— day of ——, 187—.

X. Y., Registrar.

(*r*) See Dan. Pr. 965; Ord. XLI. 42, and Sched. N., No. 9. For forms of affirmations by witnesses on their examination before the Court in other cases, see *ante*, Nos. 775—779, and notes thereto.

(*s*) The words "touching the matters in question," do not occur in the form in Sched. N., No. 9; *query*, if they should be supplied: see Ord. XLI. 42, 52; and form in Oaths in use in Court of Chancery, 9: in which these words are inserted.

(*t*) 32 & 33 Vic. c. 68, s. 4; amended by the Evidence Amendment Act, 1870 (33 & 34 Vic. c. 49); and see *ante*, No. 779, n. (*r*).

(*u*) *Query*, "Court and Jury," where the trial is to be had by a jury, before the Court itself.

(*x*) Oaths in use in Court of Chancery, 9; and see *ante*, No. 780, n. (*s*).

(*y*) Oaths in use in Court of Chancery, 10. The witness is to be called by the Usher of the Court: Ord. XLI. 42.

(*z*) Oaths in use in Court of Chancery, 10.

1086.
Oath of the usher of the Court, on jury retiring to consider their verdict (*a*).

You shall well and truly keep this jury in some private and convenient place, without meat, drink, or fire (candle-light excepted (*b*)). You shall not suffer any person to speak to them, neither shall you speak to them yourself, without leave of the Court, except to ask them if they are agreed on their verdict—So help you God.

1087.
Delivery of the verdict (*c*).

1. Gentlemen of the Jury: Are you agreed upon your verdict?
2. How do you find?

1088.
Indorsement thereof on the record (*d*).

Afterwards, on the —— day of ——, 187—, came the parties within named by their solicitors: when the jury [*Or*, his lordship, *&c.*] found that (*Set out the finding*).

X. Y., Registrar.

Section III.—Trials of Questions of Fact at the Assizes, or at Nisi Prius (*e*).

1089.
Notice of motion, for postponement of trial (*f*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that the trial of the issue directed in this cause by the order dated the ——, 187—, at the next Assizes to be holden at ——[*or as may be*], may be postponed to ——.

(*a*) See Dan. Pr. 977; Ord. XLI. 44, and Sched. N., No. 10. As to the retirement of the jury, and discharging the jury from giving a verdict, see Dan. Pr. 977—979.

(*b*) But see the Juries' Act, 1870 (33 & 34 Vic. c. 77), s. 23, which provides that the jury may, at the discretion of the judge, be allowed, at any time before giving their verdict, the use of a fire when out of Court, and reasonable refreshment: such refreshment to be procured at their own expense.

(*c*) When the jury return into Court, their names are called over by the Registrar; and they are asked by him the above questions. The foreman of the jury, in the presence and hearing of the remainder of the jury, then delivers the verdict; and it is entered by the Registrar in his minute book, and subsequently indorsed by him on the record: Oaths in use in Court of Chancery, 11; Ord. XLI. 45; and see Dan. Pr. 979; Seton, 971.

(*d*) *Sayers* v. *Sturt* (1865, S., No. 274), M. R., 20 April, 1868 (before the Court, without a jury); and see Dan. Pr. 979; Seton, 971.

(*e*) See Dan. Pr. 980—987; 25 & 26 Vic. c. 42, s. 2; Seton, 976, *et seq.* For forms of orders directing an issue, and incidental thereto, see Seton, 975, *et seq.* For forms of issue, see Chitty's Forms, 472: and for the practice at law, see Chitty's Arch. 902.

(*f*) See Dan. Pr. 983.

1090.
Notice of motion, that issue be taken *pro confesso* (*g*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that the issue directed to be tried by the order dated the ——, 187—, in this cause, at the last assizes to be holden at, *&c.* [*or as may be*], may be taken *pro confesso* against the plaintiff; and that the said issue may be taken as tried, and a verdict had for the said defendant; and that this cause may be set down to be heard on further consideration [*or as may be*].

Section IV.—New Trials (*h*).

1091.
Notice of motion, for a new trial (*i*).

Formal parts: see ante, No. 55.
on the part of the plaintiff [*Or*, defendant A. B., *&c.*], that the issue [*Or*, the question of fact—*Or*, the question as to the amount of damages], which has been tried pursuant to the order in this cause [*Or*, matter], dated the —— day of ——, 187—, may be re-tried by a special [*Or*, common] jury before this Court [*Or*, before this Court without a jury—*or as may be*].

Section V.—Assessment of Damages at Nisi Prius, or at the Assizes, or before the Sheriff (*k*).

1092.
Writ of inquiry before the Sheriff (*l*).

Victoria (*&c.: see ante*, No. 313).
To the Sheriff of Anglesey [*or as may be: see ante*, No. 308], greeting:
Whereas, by an order of his lordship the Master of the Rolls

(*g*) See Dan. Pr. 983.

(*h*) For the principles on which the Court acts in granting or refusing a new trial, see Dan. Pr. 987—1003; and see, generally, *ib.* 987—1008; 21 & 22 Vic. c. 27; 25 & 26 Vic. c. 42.

(*i*) See Dan. Pr. 1004; 21 & 22 Vic. c. 27, ss. 3, 5. For forms of orders for new trials, see Seton, 970, 990, 991; and for forms of rules for new trials at law, see Chitty's Forms, 859, 860. As to the time within which the notice of motion must be given, see Dan. Pr. 1004; Ord. XLI. 46. As to the brief, see *ante*, No. 1071. As to sending for the notes of the Judge at law, see Dan. Pr. 1004; Chitty's Arch. 907. As to an appeal from an order granting or refusing a new trial, after a trial before the Court without a jury, see Dan. Pr. 1008.

(*k*) See Dan. Pr. 1008—1010; 21 & 22 Vic. c. 27, s. 6.

(*l*) See Dan. Pr. 1008; 21 & 22 Vic. c. 27, s. 6; Ord. XLI. 47, and Sched. N., No. 11. The writ is engrossed on parchment; it may be made returnable on any day certain in term or vacation; the return day is usually the day after that on which it is intended to execute the writ; and it must not be before that day: Dan. Pr. 1009; Chitty's Arch. 996, 997. As to the preparation, issuing, and execution of a writ of inquiry, see Dan. Pr. 1009, 1010; Chitty's Arch. 996, *et seq.*; Chitty's Forms, 529.

[*or as may be*], made in this cause [*Or*, matter], dated, &c., his lordship [*Or*, his honour] awarded damages to be recovered by A. B. against C. D., in respect of (*&c.: Take words from the order*); But because it is unknown to our said Court what damages the said A. B. hath sustained by means of the premises aforesaid: therefore we command you, that by the oath of twelve good and lawful men of your bailiwick

If by a special jury, add here the words: qualified to serve as special jurors: such jury to be struck and reduced according to law,

you diligently inquire what damages the said A. B. hath sustained by reason of the premises aforesaid; and that you send to us, in our Court of Chancery aforesaid, on the —— day of ——, the inquisition which you shall thereupon take under your seal, and the seals of those by whose oath you shall take that inquisition; together with this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

1093.
Indorsement on the writ(*m*).

The same as No. 4, or 7, *ante*.

1094.
Writ of inquiry to a county palatine (*n*).

Victoria (*&c.: see ante*, No. 313).

To our Chancellor of our County Palatine of Lancaster, or to his deputy there, greeting:

Whereas (*as in* No. 1092, *ante*); but because it is unknown to our said Court what damages the said A. B. hath sustained by means of the premises aforesaid: therefore we command you, that by our writ, under the seal of our said County Palatine, to be duly made and directed to the Sheriff of the same county, you command the said Sheriff, that by the oath of twelve good and lawful men of his bailiwick

If by a special jury, add the words as in No. 1092, *ante*,

he diligently inquire what damages the said A. B. hath sustained by means of the premises aforesaid; and that you send to us in our said Court of Chancery, on the —— day of ——, the inquisition which the said Sheriff shall thereupon take under his seal, and the seals of those by whose oath he shall take that inquisition; together with this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

(*m*) See Dan. Pr. 1009. The writ should also be indorsed with a memorandum of the day on which it is to be executed: *ib.*

(*n*) See Dan. Pr. 1009; Ord. XLI. 47, and Sched. N., No. 12; and see *ante*, No. 1092, n. (*l*). For form of indorsement, see *ante*, No. 4, or 7.

1095.

Inquisition, on writ of inquiry (*o*).

to wit.

An inquisition taken at the house of ——, called or known by the name or sign of the ——, in the —— in the said county of ——, on the —— day of ——, in the —— year of the reign of our Sovereign Lady, Queen Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord 187—, before E. F., esquire, Sheriff of the county aforesaid, by virtue of a writ of our Sovereign Lady the Queen, to the said Sheriff directed, and to this inquisition annexed, to inquire of certain matters in the said writ specified, by the oaths of (*Insert names of the jurors*), twelve honest and lawful men of the said county: who upon their oaths say, that A. B., in the said writ named, hath sustained damages to the sum of £——, by the means in the said writ mentioned.

In witness whereof, as well I the said Sheriff, as the jurors aforesaid, have hereunto set our hands and seals the day and year and place above mentioned.

1096.

Writ of inquiry of damages, to be executed before the Justices of Assize (*p*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff, and to our Justices assigned to take the Assizes in and for the county of ——, greeting:

Whereas (*as in* No. 1092, *ante*); but because it is unknown to our said Court what damages the said A. B. hath sustained by means of the premises aforesaid: therefore, according to the statute in such case made and provided, we command you, the said Sheriff, that you summon twelve good and lawful men of your bailiwick

If by a special jury, add here the words: qualified to serve on special juries: such jury to be struck and reduced according to law,

to appear before our said Justices of Assize, on the —— day of ——, at ——, in the said county, by ten of the clock in the fore-

(*o*) See Dan. Pr. 1009; Ord. XLI., Sched. N., No. 13. As to notice of the inquiry, see Dan. Pr. 1009; Ord. XLI. 48. For the practice at law as to notices of inquiry, see Chitty's Arch. 998; Chitty's Forms, 542; and as to attending by counsel, and the manner in which the writ is executed, see Chitty's Arch. 1001—1003; Chitty's Forms, 542, 543. As to the return to the writ, and filing the writ and return, see Dan. Pr. 1010; Chitty's Arch. 1003; Ord. XLI. 49; and as to the course, when the sheriff refuses to make his return, see *ante*, Nos. 315—320, and notes thereto.

(*p*) See Dan. Pr. 1008; 21 & 22 Vic. c. 27, s. 6; Ord. XLI. 47, and Sched. N., No. 14; and see *ante*, No. 1092, n. (*l*). For form of indorsement, see *ante*, No. 4, or 7. No form is given by the Gen. Ord. of a writ to be executed before a Judge at Nisi Prius; but it is presumed that, in such a case, the writ should be directed to him, in place of the Justices of Assize, according to the practice at law: see Dan. Pr. 1008, n. (*g*); Chitty's Arch. 996; Chitty's Forms, 539.

noon of that day, to diligently inquire, and on their oath to assess the damages which the said A. B hath sustained by means of the premises aforesaid ; and that you, the said Sheriff, have on that day before the said Justices of Assize this writ. We likewise command our said Justices that they certify the inquisition before them taken, to us in our Court of Chancery at Westminster, on the —— day of —— next, together with the names of those by whose oath such inquisition shall be taken, and that they also have then there this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

1097.

Notice of motion, to set aside an inquisition (*q*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that the verdict or inquisition on the writ of inquiry executed before the Sheriff of Middlesex [*or as may be*], pursuant to the order in this cause dated the ——, 187—, may be set aside and a new inquiry directed before the said Sheriff, *&c.*

Section VI.—Ascertainment of Foreign Law (*r*).

1098.

Case for the opinion of a British Court abroad, under 22 & 23 Vic. c. 63 (*s*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

Case under the statute 22nd & 23rd Victoria, chapter 63, for the opinion of Her Majesty's High Court of Judicature at Fort William, in Bengal, in the East Indies [*or as may be.*]

1.
2. } (*Set forth the facts, in numbered paragraphs.*)
3.

The opinion of Her Majesty's High Court of Judicature at

(*q*) See Dan. Pr. 1010. As to setting aside a verdict or inquisition, see *ib.*; 21 & 22 Vic. c. 27, s. 6; Ord. XLI. 50. For the practice at law, see Chitty's Arch. 1003, 1004.

(*r*) See Dan. Pr. 1011—1015; and see *ib.* 1011, and 22 & 23 Vic. c. 63, as to British Courts; and *ib.* 1013, and 24 & 25 Vic. c. 11, as to foreign Courts. For forms of orders remitting a case to a British Court, see Seton, 974; and for the practice as to settling and remitting the case, and dealing with the opinion, see Dan. Pr. 1012.

(*s*) *Login* v. *Princess of Coorg*, M. R. at Chambers, 15 Feb. 1862, Reg. Lib. B. 362: 30 Beav. 632; Seton, 974, No. 2. For order, on hearing on further consideration, applying the opinion of the Court abroad, on the case submitted, see S. C., M. R., 10 July, 1865, Reg. Lib. B. 2401.

Fort William, in Bengal [*or as may be*], is requested, with reference to the Hindoo Law [*or as may be*], as administered by that Court, and so far as the same is applicable to the facts set forth in the above case, in terms of the statute 22nd & 23rd Victoria, chapter 63, upon the following

Questions.

1. What, *&c.* } (*State the questions of law on which the*
2. On whom, *&c.* } *opinion of the Court is desired.*)

1099.

Memorandum identifying case (*t*).

In Chancery.

(*Short title of cause or matter, and reference to the record.*)

This case, and the questions of law arising out of the same, above stated, have been settled and approved by the Master of the Rolls [*Or*, Vice-Chancellor ——], as the case and questions to be remitted for the opinion of the High Court of Judicature at Fort William, in Bengal [*or as may be*], pursuant to his order in this cause [*Or*, matter], dated the —— day of ——, 187—.

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1100.

Formal parts of an opinion (*u*).

In the High Court of Judicature at Fort William, in Bengal.

(*Title of the cause, as in the case remitted.*)

This cause coming on this —— day of ——, 187—, for the opinion of the Court on the questions contained in the schedule referred to in the order of the Master of the Rolls, dated the —— day of ——, 187—, upon the Hindoo law administered in this Court, as applicable to the facts set forth in the said schedule: upon hearing counsel learned on both sides, the Court pronounced the opinion set forth in the schedule hereunto annexed, and marked with the letter A. Dated, *&c.*

J. G., Registrar.

A. The schedule above referred to.

(*Title of cause.*)

The opinion of Her Majesty's High Court of Judicature at Fort William, in Bengal, with reference to the Hindoo law as administered by that Court, and so far as the same is applicable to the facts set forth in the above case, in terms of the statute 22nd & 23rd Victoria, cap. 63.

Answer to the 1st Question:

We are of opinion, *&c.*

Answer to the 2nd Question, *&c.*, *&c.*

(*Date—and signatures of the Judges.*)

(*t*) See Dan. Pr. 1013. The memorandum should be written either at the foot of the case, or in the margin of the first page of it.

(*u*) See *Login* v. *Princess of Coorg*, *ante*, No. 1098, n. (*s*).

1101. Notice of motion, or summons, to apply opinion (*v*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the opinion of Her Majesty's Court of (*Describe it*), upon the case and questions remitted to that Court pursuant to the order in this cause [*Or*, matter] dated the —— day of ——, 187—, and which opinion has been filed in the Report office of this Court, may be applied to the facts set forth in such case.

Section VII.—Further Hearing after the Trial (*x*).

1102. Petition of course, to set down cause for further hearing (*y*).

Title—and address to the L. C., or M. R.: see ante, No. 56 (*z*).

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *State order directing the trial; as thus:* By an order made by his honour the Vice-Chancellor —— [*Or*, your lordship], dated the —— day of ——, 187—, it was ordered that (*Set out the direction for the trial*).

2. *State trial and result; as thus:* The issue [*Or*, question] directed to be tried by the said order was accordingly tried on the —— day of ——, 187—, before the said Vice-Chancellor [*Or*, your lordship:

Or, by a special—*Or*, common—jury of the county of ——, before the said Vice-Chancellor—*Or*, your lordship—*or as may be*:

when his honour [*Or*, your lordship—*or as may be*] decided [*Or*, the jury found], that (*State decision or finding from the postea, or the record for trial*).

Your petitioner therefore humbly prays, that the said cause may be set down for further hearing before the said Vice-Chancellor [*Or*, your lordship].

And your petitioner will ever pray, &c.

(*v*) See Dan. Pr. 1013; 22 & 23 Vic. c. 63, s. 3.

(*x*) See, on this subject, Dan. Pr. 1015—1018; Seton, 971, *et seq.*, 992, *et seq.* As to the papers to be left for the Judge, see Dan. Pr. 1016. Counsel's brief will ordinarily consist of a copy of the decree or order directing the trial or assessment of damages, and of the record and verdict thereon, with such observations as may be deemed necessary: accompanied by the former brief. As to appeals, see Dan. Pr. 1018.

(*y*) See Dan. Pr. 1015. For orders in like cases, see Seton, 971, 992.

(*z*) If the cause is attached to a Vice-Chancellor's Court, the petition must be addressed to the Lord Chancellor; if to the Rolls, it must be addressed to the Master of the Rolls: see Ord. XXI. 9.

CHAPTER XXVIII.

PROCEEDINGS IN SUITS FOR PARTITION, TO SETTLE BOUNDARIES, AND TO ASSIGN DOWER (*a*).

1103.

Summons to nominate commissioners of partition (*b*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant A. B.], that the names of C. D., E. F., G. H., and I. K., may be inserted as the commissioners, in the commission of partition by the decree [*Or*, order] dated the —— day of ——, 187—, directed to issue.

1104.

Præcipe for a commission of partition (*c*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a commission of partition, directed to (*Insert the names of the commissioners*).
Returnable without delay [*or as the case may be*].

Order (*to issue the commission*) dated —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

(*a*) As to the proceedings in partition suits, see Dan. Pr. 1019—1033. For forms of decrees for a partition at the hearing, and in Chambers, see Seton, 571, 572; and see *post*, No. 1119. As to partition in equity, see also the Partition Act, 1868 (31 & 32 Vic. c. 40); Seton, 574, *et seq.*; 2 L. C. Eq. 427—437, 1050—1052; Story, Eq. Jur. s. 646, *et seq.*; 6 Jarm. Conv. by Sweet, 586, *et seq.*; Sugd. Pow. 836, *et seq.*; Smith's Comp. 707—711; as to copyholds, 4 & 5 Vic. c. 35, s. 85; and as to partitions reserving the minerals, 25 & 26 Vic. c. 108; *post*, Chap. XLV. As to the costs of a partition suit, see Dan. Pr. 1032; Morgan & Davey, 172, *et seq.* As to the jurisdiction of the Inclosure Commissioners, see 11 & 12 Vic. c. 99, s. 13; 20 & 21 Vic. c. 31, ss. 7, 8; see also 8 & 9 Vic. c. 118, s. 90; Cooke on Inclosures, 142—143. As to the jurisdiction, in suits to settle boundaries, see Dan. Pr. 1033, n. (*f*); Seton, 590, 591; 2 L. C. Eq. 394, *et seq.*, 1020, 1021; Story, Eq. Jur. s. 610, *et seq.*; for forms of decrees, see Seton, 588—590, 591; and as to the costs, see Dan. Pr. 1034; Morgan & Davey, 174. As to dower, and the jurisdiction of the Court in respect thereto, see Dan. Pr. 1035, *et seq.*; Sugd. Stat. 244, *et seq.*; Seton, 673, *et seq.*; Tudor, L. C. Conv. 55, *et seq.*; Story, Eq. Jur. s. 624, *et seq.*; Smith's Comp. 189, *et seq.*; 2 L. C. Eq. 402, 403, 1024; for forms of decrees, see Seton, 671—673, 676; and as to costs in a dower suit, see Dan. Pr. 1036; Morgan & Davey, 151.

(*b*) See Dan. Pr. 1023. As to the nomination of the commissioners, where the parties cannot agree, see *ib.* 1023; Seton, 582.

(*c*) Braithwaite's Pr. 235; and see Dan. Pr. 1023. The commission must

1105. Commission of partition (*d*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert the names of not less than four Commissioners* (*e*)), greeting:

Whereas, by a certain decree [*Or*, order] made by us in our High Court of Chancery on the —— day of ——, 187—, in a cause wherein (*Insert title of cause from decree or order*), it was (amongst other things) ordered that (*Insert so much of the mandatory part of the decree or order as directs the issuing of the commission, the partition, and the examination of witnesses* (*f*)): Know ye, therefore, that we in confidence of your prudence and fidelity have appointed you, and by these presents, in pursuance of the said decree, do give unto you, any two or more of you, full power and authority, and hereby command you, that you, or any two or more of you, do assemble and meet together at certain proper and convenient times and places, by you, or any two or more of you, to be for that purpose appointed; and that you do from thence go to, enter upon, walk over, and survey the said estate called the Whitehead estate [*or as it may be named in the decree*] in the said decree, and in the pleadings in the said cause more particularly mentioned (*g*); and that you do thereby, and by such other lawful ways and means as you shall think proper, and according to the best of your skill, knowledge, and judgment, make a fair partition, division, and allotment thereof, and separate and divide the same (*Insert the direction from the decree as to how many parts the estate is to be divided into, and to whom such parts or shares are to be allotted*), according to the true intent and meaning of the said in part recited decree. And for the better making such partition, division, and allotment, we do hereby also authorise and empower you, or any two or more of you, diligently to examine all such witnesses as you shall see occasion;

[*Or*, upon such interrogatories in writing or otherwise, as you shall deem necessary (*h*);]

and therefore we command you, that on certain days, and at

be engrossed on parchment; and be stamped with a 20*s*. Chancery fee fund stamp: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. It will be sealed at the Record and Writ Clerks' office, on production of the decree or order directing it to issue. As to the preparation and sealing of the commission, see Dan. Pr. 1023.

(*d*) See Dan. Pr. 1023. For forms of commissions, see Braithwaite's Pr. 233; Veal's Pr. 81. For the method of executing the commission, and making the partition, see Dan. Pr. 1023—1029.

(*e*) See Dan. Pr. 1023.

(*f*) Where a preliminary inquiry has been prosecuted at Chambers unde the decree, a statement of the Chief Clerk's certificate of the result should be here inserted, and the subsequent parts of the writ be varied accordingly: see Braithwaite's Pr. 235; Dan. Pr. 1023.

(*g*) See Dan. Pr. 1025, 1026.

(*h*) The words within brackets should only be inserted in cases where the decree directs an examination upon interrogatories: Braithwaite's Pr. 234.

certain places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them on their respective corporal oaths first taken before you, or any two or more of you, upon the Holy Evangelists, or in such other solemn manner as is or may be authorised by law; and that you do take their examinations, and reduce them into writing on paper (*i*); and when you shall have so done, you, or any two or more of you, are to make a certificate of such partition, division, and allotment, and all the proceedings in the premises, and send them, together with this writ, and the depositions of such witnesses (if any) as shall be examined by you touching the premises, unto us in our said Chancery (*If no return day is named in the decree, add:* without delay), wheresoever it shall then be, under the hands and seals of you, or any two or more of you, distinctly and plainly set. Witness (*&c.: Conclude as in* No. 313, *ante*).

1106.

Indorsement on the commission (*k*).

By Order of Court.
A.
v.
B.

Commission of Partition.
(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1107.

Præcipe for *subpœna*, for attendance of witnesses (*l*).

The same as No. 762, *ante*.

1108.

The *subpœna* (*m*).

Victoria (*&c.: see ante*, No. 313).
To (*Insert names of witness or witnesses*), greeting:
We command you (*If more than one, add:* and every of you) that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before E. F., and G. H., commissioners named in a commission issued to them for that purpose, at such time and place as the bearer hereof shall by notice in writing appoint, to testify the truth according to your know-

(*i*) See Ord. 6 Mar. 1860, r. 16.

(*k*) Braithwaite's Pr. 234.

(*l*) See Dan. Pr. 1023; and note to No. 762, *ante*. As to the power of the commissioners to summon witnesses, and the mode of examination, see Dan. Pr. 1023, 1024; and see *ante*, No. 800, n. (*b*).

(*m*) See Dan. Pr. 1023. The form here given is prescribed by Ord. XXVIII. 2, and Sched. E., No. 3, subject to such alterations and variations as circumstances may require: Ord. XXVIII. 2. As to the number of witnesses that may be included, see *ib.* rr. 3, 4; and *ante*, No. 763, n. (*q*).

ledge in a certain suit now depending in our High Court of Chancery, wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

on the part of the plaintiff [*Or*, defendant A. B.—*or as may be*].

In the case of a subpœna duces tecum, add: and that you then and there bring with you and produce (*Specify the documents to be produced* (*n*).

And hereof fail not at your peril. Witness (*&c.: Conclude as in* No. 313, *ante*).

1109. Indorsement on the *subpœna* (*o*).

The same as *ante*, No. 4 *or* 7.

1110. Notice to the witness, of time and place of attendance (*o*).

Formal parts: see ante, No. 54.

Take notice, that you are required to attend before (*Insert names of acting commissioners*), the Commissioners acting under the commission of partition issued in this cause, at (*State where; as thus:* the Red Lion Inn, Wells, in the county of Somerset), on ——, the —— day of ——, 187—, at —— of the clock in the —— noon, to give evidence on the part and behalf of the above named plaintiff [*Or*, defendant A. B.—*or as may be*].

1111. Oaths and affirmations of witnesses (*p*).

The same as Nos. 782—788, *ante*.

1112. Summons for further time to file a certificate of partition (*q*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the time for filing the certificate or return of the Commissioners, to the commission of partition issued pursuant to the order dated the —— day of ——, 187—, may be enlarged to the —— day of —— next.

(*n*) For the mode of describing documents, see *ante*, No. 745; and as to the degree of particularity with which the documents must be described, see *Attorney-General* v. *Wilson*, 9 Sim. 526; *Newland* v. *Steer*, 11 Jur. N. S. 596: 13 W. R. 1014, V. C. K.; *Lee* v. *Angas*, Law Rep. 2 Eq. 59, V. C. W. As to the power of the commissioners to compel, and mode of compelling, the production of documents, see Dan. Pr. 1024, 1025.

(*o*) See Dan. Pr. 1023.

(*p*) *Ibid.*; and notes to Nos. 782—788, *ante*.

(*q*) See *Howard* v. *Barnwell*, V. C. S. at Chambers (by consent), 29 Jan. 1864, Reg. Lib. A. 96.

1113. Certificate of commissioners of partition (*r*).

In Chancery.

(*Full title of the cause, and reference to the record.*)

To the Right Honourable the Lord High Chancellor of Great Britain.

We whose names are hereunto subscribed, being two [*or as may be*] of the commissioners named in the commission hereunto annexed, do humbly certify unto your lordship, as follows :

1. We did on the —— day of ——, 187—, in pursuance of the said commission, assemble and meet together at ——, in the county of ——, and we did from thence go to (*&c. : Follow the language of the writ ; and give a clear and accurate statement of the course of proceeding actually pursued*).

If witnesses were examined, add here : And we have examined upon oath the following witnesses, that is to say (*Set forth the names of the witnesses. If any of the parties to the suit were examined as witnesses, only their names need be stated ; in other cases, the addresses of the witnesses should also be set forth*) : whose examinations we have taken and reduced into writing on paper (*s*) ; and we have annexed such examinations to this our return.

2. We find that the said hereditaments and premises consist of the particulars set forth in the schedule hereunder written ; and such particulars, for the sake of more complete description, are also delineated in the map or plan hereunto annexed, marked A.

3. We have, according to the best of our skill, knowledge, and judgment, made a fair partition, division, and allotment of the said hereditaments and premises, and have divided the same into —— equal parts, and allotted the same to the parties in such proportions, manner, and form as by the said commission is directed (*t*).

4. One of such —— equal parts consists of the hereditaments and premises particularised in the first part of the said schedule hereto ; and is distinguished on the said map or plan by a red colour. We have allotted, and do hereby allot, to the plaintiff A. B. the hereditaments and premises particularised in the said first part of the said schedule.

5. One other of such —— equal parts consists of the hereditaments and premises particularised in the second part of the said schedule hereto ; and is distinguished on the said map or plan by a blue colour. We have allotted, and do hereby allot, to the

(*r*) See Dan. Pr. 1028 ; Braithwaite's Pr. 236. There is no prescribed form of certificate or return to a commission of partition ; as a rule, it should follow, as nearly as may be, the language of the commission ; see Braithwaite's Pr. 234, n. As to separate certificates, where the commissioners disagree, see Dan. Pr. 1028, 1029.

(*s*) See Ord. 6 Mar. 1860, r. 16.

(*t*) As to the form, when the commissioners, at the desire of the parties, abstain from allotting a portion of the estate, see Braithwaite's Pr. 238.

defendant C. D., the hereditaments and premises particularised in the said second part of the said schedule.

[*Proceed in like manner, as to any other shares.*]

In testimony whereof we have hereunto set our hands and seals, this —— day of ——, 187— (*u*).

E. F., (L. S.)
G. H., (L. S.)
I. K., (L. S.)
L. M., (L. S.)
} Commissioners.

The Schedule above referred to.

(*Divide the schedule into parts, corresponding with the shares allotted.*)

1114.

The execution of this commission appears in the schedules hereunto annexed.

E. F. (*&c., as above*), Commissioners.

Return to be indorsed on the commission (*x*).

1115.

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant A. B.], that the paper writing filed in this cause on the —— day of ——, 187—, and purporting to be the certificate, or return, of E. F. and G. H., to the commission of partition issued pursuant to the decree [*Or*, order] in this cause, dated the —— day of ——, 187—, may be quashed; and that such certificate may be taken off the file.

Notice of motion, to quash the certificate (*y*).

1116.

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for an order *nisi* to confirm the certificate, dated the ——, 187—, of E. F. and G. H., in pursuance of the commission of partition issued under the decree [*Or*, order] dated the ——, 187—.

Motion paper, for order *nisi* to confirm the certificate (*z*).

(*u*) The acting commissioners should also sign each schedule annexed to, or written under, the certificate, and each plan; but their signatures need not be attested: Dan. Pr. 1028; Braithwaite's Pr. 238.

(*x*) This return must be indorsed on the commission, and signed by the acting commissioners: Dan. Pr. 1028; Braithwaite's Pr. 238. The several documents should be annexed to the commission in the following order: (1) The commission; (2) The certificate; (3) The plans; and (4) The depositions; and closed up and sealed by the acting commissioners; and transmitted by them to the Record and Writ Clerks' office, to be there filed: see Dan. Pr. 1029; Braithwaite's Pr. 238.

(*y*) See Dan. Pr. 1029. For order in like case, see Seton, 583, No. 17. As to directing a new commission to issue, see *ib.*; Dan. Pr. 1029.

(*z*) See Dan. Pr. 1029. For order in like case, see Seton, 583, No. 15. In *Howard v. Barnwell*, V. C. S. at Chambers, 27 Feb. 1865, Reg. Lib. A. 510, the certificate was made absolute in the first instance, on summons, by consent; and in *Robinson* v. *Pearson*, V. C. M. at Chambers, 12 Jan. 1869, Reg. Lib. B. 23, a like order was made on the application of all parties.

1117.
Motion paper, for order absolute to confirm certificate (*a*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that the order *nisi* dated the ——, 187—, to confirm the certificate of the commissioners of partition, may be made absolute.

The order, affidavit of service, and certificate of no cause shown, accompany.

1118.
Affidavit in support (*b*).

The same as No. 48, *ante*.

1119.
Decree, for a partition at Chambers of a settled estate, vested in adults, and an infant (*c*).

(*Date—title—and introduction, on motion for decree*).—His lordship doth order, that the following inquiries be made, namely:

1. An inquiry what parts of the freehold lands and hereditaments devised by the will of S. S., deceased, the testator in the bill named, are now held in common.

2. An inquiry what sum is due to the plaintiffs in respect of rents and profits of the lands and hereditaments which shall be certified to be so held in common, and from whom.

And his lordship doth declare, that one moiety of the lands and hereditaments which shall be certified to be so held in common is subject to the limitations contained in the indenture of the 13th August, 1863, in the bill mentioned; and that the other moiety thereof is subject to the limitations contained in the will of S. S. F. deceased, in the bill named.

And his lordship doth order, that the said lands and hereditaments be partitioned and allotted by the Judge: having regard to the said declaration; and that one moiety thereof be allotted to the uses of the said indenture of the 13th August, 1863; and that the other moiety thereof be allotted to the uses of the said will of the said S. S. F.; and be held and enjoyed, in severalty, by the persons entitled thereto, under the said indenture and will respectively.

And his lordship doth declare that, upon the said partition being made, the defendant J. S. F. will be a trustee, within the meaning of the Trustee Act, 1850, of the moiety of the estate to be conveyed to the uses of the said indenture; and doth appoint the defendant A. E. F. to convey the estate and interest of the said J. S. F. in such moiety accordingly; and doth order that the plaintiffs do execute a conveyance of one moiety of the said lands and hereditaments to the uses of the said will of the said S. S. F.;

(*a*) See Dan. Pr. 1030. For order in like case, see Seton, 583, No. 16.

(*b*) See Dan. Pr. 1030.

(*c*) *Rothery* v. *Fitzsimons*, M. R., 27 Jan. 1866, Reg. Lib. B. 227. As to partitions at Chambers, see Dan. Pr. 1030. For form of decree in like case, see Seton, 571, No. 2; and for the general practice at Chambers, see Dan. Pr. 1039, *et seq.*; and *post*, Chap. XXIX. As to mutual conveyances, custody of the title deeds, and payment of the costs, see Dan. Pr. 1030—1033. For forms of conveyances, see 2 Prideaux, Conv. 498—505; 5 Davidson's Conv. 520.

and that the defendant A. E. F. do execute, on behalf of herself and the said defendant J. S. F., a conveyance of the other moiety of the said lands and hereditaments to the uses of the said indenture of the 13th August, 1863: such conveyances to be settled by the Judge.

And his lordship doth declare, that the costs of the defendants of this suit are to be a charge upon the hereditaments to be allotted and conveyed to the uses of the said will of the said S. S. F.; and the defendants are to be at liberty to apply in Chambers as to raising such costs, by a sale or mortgage of the hereditaments so charged therewith. And his lordship doth order, that the costs of the said partition be borne by the parties in equal moieties.

Liberty to apply.

1120.

Chief Clerk's certificate of the result of the proceedings under the decree (*d*).

(*Title.*)—In pursuance (*&c.* : *as in ante*, No. 514).

The plaintiffs and defendants have attended by their respective solicitors.

1. Such of the freehold lands and hereditaments devised by the will of S. S., deceased, the testator in the bill named, as are now held in common, consist of the particulars set forth in the schedule hereto.

The evidence produced on this inquiry consists of, *&c.*

2. There is not any sum due to the plaintiffs in respect of rents and profits of the said lands and hereditaments so held in common as aforesaid, or any of them.

The evidence produced, *&c.*

The said lands and hereditaments have been partitioned and allotted by the Judge : having regard to the declaration contained in the said decree. The lands and hereditaments so partitioned and allotted are delineated on the plan marked A., verified by the affidavit of J. H., filed ——, 187—, and which plan is annexed to, and is to be filed with, this certificate.

One moiety of the said lands and hereditaments has been allotted to the uses of the indenture of the 13th August, 1863, in the said decree mentioned ; and such moiety consists of the particulars set forth in the first part of the schedule hereto ; and is distinguished on the said plan by a blue colour.

The other moiety of the said lands and hereditaments has been allotted to the uses of the will of S. S. F., in the said decree named ; and such moiety consists of the particulars set forth in the second part of the schedule hereto ; and is distinguished on the said plan by a red colour.

A thorn fence is to be erected across the field called Little Rakes, numbered 715 in the schedule hereto, from the point marked A. to the point marked C. on the said plan, in order that such fence may divide the portion of the said field comprised in the first part of the said schedule, and coloured blue on the said

(*d*) See *Rothery* v. *Fitzsimons* (filed 11 Feb. 1867); *ante*, No. 1119, n. (*c*).

plan, from the portion thereof comprised in the second part of such schedule, and coloured red on the said plan. The persons to whom the lands and hereditaments comprised in the first part of the said schedule have been allotted, as aforesaid, are to bear one moiety of the expense of erecting the said fence, and are for ever hereafter to maintain so much of the said fence as, when erected, will extend from the point marked A. on the said plan, to the point marked B. thereon. The persons to whom the lands and hereditaments comprised in the second part of the said schedule have been allotted, as aforesaid, are to bear the other moiety of the said expense, and are for ever hereafter to maintain so much of the said fence as, when erected, will extend from the point marked B. on the said plan to the point marked C. thereon.

The evidence produced, *&c.*

A conveyance of one moiety of the said lands and hereditaments, to the uses of the said will of the said S. S. F., and a conveyance of the other moiety thereof to the uses of the said indenture of the 13th August, 1863, have been settled. Such conveyances consist of two parts of an indenture intended to be made between the plaintiffs C. R., and E. his wife, of the first part, the defendant A. E. F., of the second part, and A. H., of W., gentleman, of the third part; and each of such parts is identified by my signature in the margin of the engrossment thereof.

The evidence produced, *&c.*

THE SCHEDULE ABOVE REFERRED TO.

First Part.

Number on plan.	Name of field.	Quantity.

Second Part.

(*Repeat as above.*)

1121. Proceedings under decrees to settle boundaries, or to assign dower (*e*).

See *ante*, Nos. 1103—1120.

(*e*) For the practice in these cases, see Dan. Pr. 1033—1035—1037; and see *ante*, Nos. 1103—1120, and notes thereto. A commission to settle boundaries, or to assign dower, is nearly in the same form, and is made out, executed, and returned in the same manner, as a commission of partition: see Dan. Pr. 1033, 1035; Braithwaite's Pr. 239.

CHAPTER XXIX.

PROCEEDINGS IN THE JUDGES' CHAMBERS.

Section I.—General Course of Proceeding at Chambers (*a*).

1. *Summonses* (*c*).

1122. Summons to administer an estate (*b*).

The same as No. 1201, *post*.

(*a*) See Dan. Pr. 1039—1070. As to the power and jurisdiction of the Judges at Chambers, see Dan. Pr. 1039, 1040; 15 & 16 Vic. c. 80, ss. 11—13, 36; Ord. XXXV. 61, 62. As to adjournments to or from Chambers, see Dan. Pr. 1040, 1056, 1188; 15 & 16 Vic. c. 80, s. 27; Regul. 8 Aug. 1857, r. 3; and see *post*, No. 1463. As to the business to be disposed of at Chambers, see Dan. Pr. 1040—1042; 15 & 16 Vic. c. 80, s. 26; 18 & 19 Vic. c. 134, s. 16; Ord. XXXV. 1. As to the staff of Clerks at Chambers, see Dan. Pr. 1043. As to the qualification required for the office of Chief Clerk, see Dan. Pr. 1043; 15 & 16 Vic. c. 80, s. 17; 30 & 31 Vic. c. 87, s. 2; but see 27 & 28 Vic. c. 127, s. 3; and as to the duties of the Chief and other Clerks, see Dan. Pr. 1044—1046; 15 & 16 Vic. c. 80, ss. 23, 29—34; 18 & 19 Vic. c. 134, s. 2; 27 & 28 Vic. c. 15, ss. 4, 5; 30 & 31 Vic. c. 87, ss. 2, 6; Ord. I. 34; and 2nd Rep. Eng. & Ir. Com. (1866), App. p. 126, *et seq.* As to the practice where the prosecution of proceedings at Chambers is delayed, see Dan. Pr. 1048; Ord. XXXV. 23; and see 15 & 16 Vic. c. 80, ss. 7—9, 37. As to defaults by receivers, see Dan. Pr. Chap. XXXIX.; Ord. XXIV. 2; XXXV. 23; and *post*, Chap. XXXIX. As to conveyancing counsel, see Dan. Pr. 1046, 1047; *post*, No. 1263, n. (*y*). As to scientific assistance, see Dan. Pr. 1048; and *post*, No. 1189, n. (*u*).

(*b*) See notes to No. 1201, *post*.

(*c*) As to summonses generally, see Dan. Pr. 1050—1055; 15 & 16 Vic. c. 80, s. 28; Ord. XXXV., and Sched. K. Nos. 1—3. As to the different classes of summonses, see Dan. Pr. 1050, n. (*y*). For lists of applications which may be made by *ex parte* summons, and by summons on notice, see Dan. Pr. App. III. The general rules as to the persons by (Dan. Pr. 4—45, 46—119), and against (*ib.* 120—171), whom a suit may be instituted, the parties to a suit (*ib.* 172—257), the authority to institute proceedings (*ib.* 259—264), including the authority of a next friend to use his name (*ib.* 67, 104, 260), and the names and addresses of plaintiffs and next friends (*ib.* 299—302), apply to proceedings commenced by summons, as well as to proceedings commenced by bill. As to applications to stay proceedings, or take a summons off the file, see *post*, Nos. 1143—1146. For the practice as to preparing, issuing, and serving summonses and filing duplicates, and sealing copies for service, of originating summonses, see Dan. Pr. 1050, *et seq.* The duplicate must be written on paper of the same

1123.

Formal parts of a summons to originate any other proceeding(*d*).

In Chancery.

(*Set out the title of the proposed matter, as thus:* In the matter of A. B., an infant, by C. D., his next friend.

Or,

A. B., a person of unsound mind not so found, by C. D., his next friend.

Or,

A. B., the wife of C. B., by E. F., her next friend (*e*).

Let all parties concerned attend at my Chambers (*State where; as:*

in the Rolls' Yard, Chancery Lane, Middlesex,

Or,

in Old Square, Lincoln's Inn, Middlesex,

Or,

at No. 3, Stone Buildings, Lincoln's Inn, Middlesex,

Or,

at No. 11, New Square, Lincoln's Inn, Middlesex),

on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, on the hearing of an application on the part of (*State on whose behalf the application is made* (*f*)), that (*State the precise object of the application; as thus* (*g*):

the £——, cash in the bank, on the credit of this matter, may be paid to the applicant).

Dated this —— day of ——,187—.

Romilly, Master of the Rolls.

Or,

John Stuart, Vice-Chancellor.

Or,

Richard Malins, Vice-Chancellor.

Or,

James Bacon, Vice-Chancellor.

This summons was taken out by A. and B., of Lincoln's Inn, in

description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. For the mode of recording originating summonses in the Record and Writ Clerks' books, see *ante*, No. 1, n. (*a*); and as to marking thereon, and on subsequent proceedings in the matter, the "Reference to the Record," see *ante*, Nos. 1, 196. A fee of 5*s.*, by each scale, is payable on issuing the original of every originating summons, and a fee of 5*s.* higher scale, or 1*s.* lower scale, on issuing every duplicate thereof; and a fee of 3*s.* higher scale, or 1*s.* lower scale, is payable on issuing every ordinary summons: Regul. to Ord. Sched. 4; *post*, Chap. XXXI. The fees are paid in Chancery fee fund stamps impressed on, or affixed to, the summons.

(*d*) See Dan. Pr. 1050, *et seq.*; Ord. XXXV. 2, and Sched. K. No. 1.

(*e*) For other forms of titles, see *post*, Chap. XLV., s. 1.

(*f*) For forms of description of applicants, see *ante*, Nos. 55, n. (*t*), and 159—193, and notes thereto.

(*g*) For various forms of description of the special object of an originating summons, see *Index*, SUMMONS (ORIGINATING).

the county of Middlesex, solicitors for the applicant [*or as may be: see ante*, No. 4 *or* 7 (*h*)].

Where service of the summons is necessary (*i*), *address it to the parties required to be served* (*k*); *and add foot note; as thus:*

To the above named C. D., and E. F. [*Or*, To C. D., of (*residence and addition*), and E. F., of, *&c.*].

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned,

Or, if the return day of the summons is altered (*see post*, No. 1126), *say:* at the place above mentioned, at the time mentioned in the indorsement hereon,

such order will be made, and proceedings taken, as the Judge may think just and expedient.

Foot note (*i*).

1124.

Formal parts of an ordinary summons (*l*).

The same as No. 60, *ante*.

1125.

Chief Clerk's summons (*m*).

The same as No. 1158, *post*.

1126.

Note of enlargement of return of an originating summons (*n*).

(Wednesday), the —— day of ——, 187—, at —— of the clock in the ——noon, is appointed for such of the parties as have not been served with this summons to attend at my Chambers within mentioned. Dated this —— day of ——, 187—.

Romilly, Master of the Rolls [*or as may be: see ante*, No. 1123].

(*h*) The summons must be underwritten with the name and place of business of the solicitor issuing it, and of his agent, if any: or with the name and place of residence of the applicant, where he acts in person; and, in either case, with the address for service, if any: Ord. III. 2, 5; Dan. Pr. 378, 379. For other forms, see *ante*, Nos. 3, 5, 6.

(*i*) If the application is to be made *ex parte*, the foot note, as well as the address, should be omitted: see Dan. Pr. 1050, n. (*b*).

(*k*) Every summons should be addressed to the parties themselves, and not to their solicitors: Dan. Pr. 1050.

(*l*) See notes to No. 60, *ante*.

(*m*) See notes to No. 1158, *post*.

(*n*) See Dan. Pr. 1052; Ord. XXXV. 8. The indorsement is made on the original summons, and on each copy stamped for service, and it must be sealed at the Judge's Chambers: *ib.* As to the variation required, in such case, in the foot note to the summons, see *ante*, No. 1123. The indorsement need not be made on the duplicate summons filed at the Record and Wri Clerks' Office: Braithwaite's Pr. 110. The solicitor's fee for indorsing the original summons and the copies thereof, and attending to get the same sealed, is 6*s.* 8*d.*, on each scale: Regul. to Ord. Sched. 2; *post*, Chap. XXXI. As to

1127.
Enlargement of return of an ordinary summons (*o*).

Adjourned till (Wednesday), the —— day of ——, 187—, at —— of the clock in the ——noon, for service on (*State whom; as thus:* the defendant A. B.). Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1128.
Summons to amend an originating summons (*p*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*or as may be*], that the original summons, dated the —— day of ——, 187—, issued from, and under the seal of, my Chambers, and the duplicate of the said summons, filed on the —— day of ——, 187—, may be amended as follows; namely: (*State the proposed amendment; as thus:* by adding A. B., of (*residence and addition*), as a co-applicant).

1129.
Order thereon (*q*).

Formal parts: see post, No. 1194.
Upon the application of the plaintiff [*or as may be*], and upon hearing the solicitors for the applicant (*If so:* and for the defendant—*or as may be*), and upon reading (*Describe the evidence, if any, used on the application: see post*, No. 1194), the original summons, dated the —— day of ——, 187—, issued from, and under the seal of, the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], has been amended as follows; namely: (*State the amendments*). And it is ordered, that the duplicate of the said summons, filed on the —— day of ——, 187—, be amended accordingly.—(*Add any direction given as to the costs.*)

1130.
Direction to amend duplicate summons, without a formal order (*r*).

Let the duplicate be amended, as within.

R. M.,
Chief Clerk.

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altering the return day, without an indorsement, where no service of the summons has been made, see Dan. Pr. 1052; and as to the length of service necessary, see *ib.* 1051; Ord. XXXV. 7; XXXVII. 11.

(*o*) See Dan. Pr. 1052. The note should be written in the margin of the original summons; and a copy thereof should be set forth in the margin of each copy for service: *ib.* As to altering the return day, instead of adding the note, where no service of the summons has been made, see *ib.* As to the length of service necessary of an ordinary summons, see Dan. Pr. 1051; Ord. XXXV. 7; XXXVII. 11; and as to obtaining a short return, see Dan. Pr. 1051, n. (*q*).

(*p*) See Dan. Pr. 1053. For orders in like case, see *Re Woollams, Layton* v. *Spicer*, V. C. S. at Chambers, 13 Dec. 1866, Reg. Lib. B. 2537; *Re Wood, Manley* v. *McCauley*, M. R. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2229. As to the mode of amendment, and as to amending summonses without an order, see Dan. Pr. 1052; Reg. Regul. 8 Aug. 1857, r. 1.

(*q*) See Dan. Pr. 1053.

(*r*) *Ibid.* As to when this direction will be sufficient, without a formal

1131.
Præcipe, on stamping or restamping, for service, a copy of an originating summons (*s*).

In Chancery.

(*Reference to the record.*)

(*Short title.*) Seal [*Or*, Re-seal] one copy [*Or*, —— copies] of summons, for service.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party presenting the copy to be stamped: see ante*, No. 4, *or* 7.)

1132.
Summons, for substituted service of a summons (*t*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that service of the summons, dated the —— day of ——, 187—, issued in this matter [*Or*, matter and cause], from and under the seal of my Chambers, at the instance of the said applicant, together with a copy of the order to be made hereon, upon (*Describe the proposed substitute; as thus:*

C. D., of (*residence and addition,*

Or, C. D., and E. F., members of the firm of D. & F., of (*Place of business and addition*), or upon either of them),

may be deemed good service on the defendant A. B. [*or as may be*].

1133.
Affidavit in support (*u*).

Formal parts: see ante, No. 9.

1. *Show the necessity for serving a copy of the summons on the person proposed to be served, by substitute.*

2. *Show what efforts have been made to serve such person with the copy; that all practicable means of effecting such service have been exhausted; and that the proposed substitute has been appointed by such person to act as his agent in the matter, or other special grounds. Show, also, how the substituted service is proposed to be effected.*

3. *Show means of knowledge.*

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order, see *ib.* The direction is written on the original summons, after the amendment thereof at Chambers.

(*s*) See Dan. Pr. 1051, n. (*e*). One *præcipe* is sufficient for any number of copies sealed at the same time, and in the same matter: Braithwaite's Pr. 109, 111. A fee of 5*s.* higher scale, or 1*s.* lower scale, for marking each copy to be served, is payable by a fee fund stamp, impressed on, or affixed to, the copy: see Regul. to Ord. Sched. 4; *post*, Chap. XXXI. No further fee is payable on re-stamping copies for service.

(*t*) See Dan. Pr. 1054. For order in like case, see *Wickham* v. *Webster*, V. C. W. at Chambers, 1 Dec. 1866, Reg. Lib. B. 2430. The application is made *ex parte*: Dan. Pr. 1054. As to substituted service, generally, see *ib.* 370, *et seq.*; and of a bill, see *ante*, Nos. 285, 286, and notes thereto.

(*u*) See Dan. Pr. 1054.

1134.

Order, for substituted service of summons to proceed under an order (*x*).

Formal parts: see post, No. 1194.

It is ordered, that service of the summons issued in this cause on the —— day of ——, 18—, and which by adjournment is returnable on the —— day of ——, 18—, at —— of the clock in the forenoon, at the Chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane, Middlesex, and of the order dated the —— day of ——, 18— (*Directing accounts and inquiries*), by leaving copies of such summons and order, together with copies of this order, at the last respective residences of the defendants I. A., R. A., *&c.*, at E. P., in the county of K., be deemed good service upon the said defendants I. A., R. A., *&c.*; and that a copy of the said summons be, within ten days after such service, inserted in the London Gazette, and the Times [*or as may be*] newspapers.

1135.

Summons, for leave to serve a summons abroad (*y*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that he may be at liberty to serve a copy of the summons dated (*Continue as in* No. 1132, *ante, to* hereon), upon the defendant A. B. [*or as may be*], at (*State where; as thus:* Vienna, or elsewhere in the empire of Austria).

1136.

Affidavit in support (*a*).

Formal parts: see ante, No. 9.

1. *Show the necessity for serving a copy of the summons on the person proposed to be served abroad.*

2. *Show in what place or country such person is, or may probably be found.*

3. *Show means of knowledge.*

1137.

Affidavit of service of an originating summons (*b*).

Formal parts: see ante, No. 9.

1. On ——, the —— day of ——, 187—, before seven of the clock in the evening

Or, two of the clock in the afternoon—*or as may be*,

of that day (*c*), I served (*Describe the person or persons required to*

(*x*) *Waterhouse* v. *Cheesman*, M. R. at Chambers, 1 Mar. 1864, Reg. Lib. B. 428.

(*y*) See Dan. Pr. 1054. The application is made *ex parte*. The summons to be served should be made returnable on a day sufficiently distant to allow of the service abroad, and of the party served communicating with England: see Table of times, *ante*, No. 290. As to service abroad, see, generally, Dan. Pr. 373, *et seq.*; and of a bill, see *ante*, Nos. 287—289, and notes thereto.

(*a*) See Dan. Pr. 1054.

(*b*) *Ibid.*; Regul. 8 Aug. 1857, Sched. No. 1. As to the mode of service of an originating summons, see Dan. Pr. 1053. For form of affidavit of having been served with such summons, see *ante*, No. 52.

(*c*) As to the hours for service, where personal service is not required, see

be served: see the examples set out in ante, No. 50),
with a summons in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, issued from, and under the seal of, the Chambers of the Master of the Rolls [*Or*, the Vice-Chancellor Sir John Stuart—*or as may be*], and addressed to the said (*Names of the persons required, as above, to be served—If so, add:* and others): by delivering to, and leaving with (*Describe the person or persons on whom, and where, service was effected: see ante*, No. 50), a true copy of the said summons, duly stamped with a stamp of the Record and Writ Clerks' office indicating the filing of a duplicate of the said summons at the said office; and I, at the same time, showed the said summons to the person [*Or*, to each of the persons] to whom such true copy was delivered as aforesaid: by which summons all parties concerned were required to attend at the Chambers aforesaid in the Rolls' Yard, Chancery Lane, Middlesex [*Or*, in Old Square, Lincoln's Inn, Middlesex—*or as may be: as in summons*], on ——, the —— day of ——, 187—, at —— of the clock in the —noon,

In the case of an administration summons, add: and show cause, if he [*Or*, they] could, why an order for the administration of the real and personal estate of the above named E. F., should not be granted [*or as may be: as in the summons*].

But in other cases, add: on the hearing of an application on the part of (*State whom: as in summons*), for the purposes therein specified.

2. There was at the foot of the copy [*Or*, of each copy] of the said summons so served, and at the foot of the said summons when so produced as aforesaid, a memorandum or statement that such summons was taken out by ——, of ——, solicitor for —— (*Insert these particulars from the summons*); and a notice that if the said (*Insert name*) did not attend, either in person or by his solicitor, at the time and place mentioned in the said summons,

Or, if so: at the place mentioned in the said summons, at the time mentioned in the indorsement thereon (*d*),

such order would be made, and proceedings taken, as the Judge might think just and expedient.

Where the time for service has been enlarged by indorsement (*d*), *add:* 3. There was upon the copy [*Or*, upon each copy] of the said summons so served an indorsement, dated the —— day of ——, 187—, under the seal of the Chambers of the said Judge, whereby ——, the —— day of ——, 187—, at —— of the clock in the ——noon, was appointed for such of the parties as had not been served with the said summons to attend at the said Chambers [*or as may be*].

Dan. Pr. 380. Ord. XXXVII. 2. The statement as to the hour seems material only where the service is not made until the last day allowed to effect it; it is advisable, however, to insert the statement in every case.

(*d*) See *ante*, No. 1126.

1138.
Affidavit of service of an originating summons, on a substitute (*e*).

Proceed as in No. 1137, *ante, to* delivering to, *and continue thus:* and leaving with (*Name of substitute*), at (*State where*), in the (county) of ——, a true copy of the said summons duly (*Continue as in* No. 1137, *ante, to the end of that Form*).

(4). The said (*Name of substitute*), is the person (*Continue as in par.* 3 *of* No. 51, *ante, to the end*).

1139.
Affidavit of service of an ordinary summons (*f*).

The same as No. 50, *ante*.

1140.
The like, on a substitute (*g*).

The same as No. 51, *ante*.

1141.
Præcipe for appearance to an originating summons (*h*).

In Chancery.

(*Short title.*) } (*Reference to the record.*) Enter an appearance for A. B., to summons at the suit of C. D.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance: see ante,* No. 4, *or* 7.)

1142.
Notice of appearance (*i*).

Formal parts: see ante, No. 54.

Take notice, that I have this day entered an appearance for the defendant A. B. [*or as may be*], to the summons, dated ——, 187—, issued in this matter [*Or*, matter and cause].

(*e*) As to substituted service of a summons, see *ante,* Nos. 1132—1134, and notes thereto.

(*f*) See notes to No. 50, *ante.* For form of affidavit of having been served with an ordinary summons, see *ante,* No. 52.

(*g*) As to substituted service, see Dan. Pr. 370, *et seq.*

(*h*) See Dan. Pr. 1053; Ord. XXXV. 9. The appearance is entered in like manner as an appearance to a bill: Dan. Pr. 1053: as to which, see *ante,* No. 484, nn. (*a*), (*b*). As to the entry of a conditional appearance to a summons, see Dan. Pr. 1053, n. (*f*); and for forms, see *ante,* Nos. 487—489; and see notes thereto.

(*i*) See Dan. Pr. 1053; Ord. XXXV. 9.

1143.
Summons to dismiss an originating summons taken out without authority, or to stay proceedings (*k*).

Formal parts: see ante, No. 60.
on the part of A. B., in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as the applicant therein:

1. That the duplicate of the said summons may be taken off the file of this Court, and the said summons be dismissed with costs: on the ground that such summons has been taken out without the authority of the applicant.

2. That the defendant's [*Or*, respondent's] costs occasioned by the said summons may be taxed; and that Mr. C. D., the solicitor by whom the said summons has been taken out, may be ordered to pay such costs to the persons entitled thereto.

3. That in case he shall neglect so to do, and the applicant shall pay the said costs, or any part thereof, the said C. D. may be ordered to re-pay to the applicant what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.

4. That the said C. D. may be ordered to pay to the applicant his costs, if any, of the said summons, and consequent thereon, and of this application: to be taxed as between solicitor and client.

1144.
Summons by a co-applicant, to strike his name out of a duplicate summons filed without his authority, and stay proceedings (*l*).

Formal parts: see ante, No. 60.
on the part of A. B., in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as one of the applicants therein:

1. That the name of the said A. B. may be struck out of the duplicate, filed in the Record and Writ Clerks' office, of the said summons: on the ground that the said summons has been taken out without his authority; and that no further proceedings may be taken in his name, or on his behalf.

2. That Mr. C. D., the solicitor by whom the said summons has been taken out, may be ordered to pay to the said A. B. his costs, if any, of the said summons, and consequent thereon, and of this application: to be taxed as between solicitor and client.

(*k*) See Dan. Pr. 1051; and see *ante*, No. 643. For forms of applications on behalf of infants or married women respecting improper or unathorised suits by bill, see *ante*, No. 646, *et seq.*: which can readily be adapted to a proceeding by summons. As to the authority to prosecute or defend a proceeding by summons, and of a next friend to use his name, see Dan. Pr. 1051; 15 & 16 Vic. c. 86, s. 11. For forms of authority, see *post*, Chap. XLIV.

(*l*) See Dan. Pr. 1051; and *ante*, No. 644.

1145.
Summons to dismiss an ordinary summons, taken out without authority (*m*).

Formal parts: see ante, No. 60.
on the part of A. B., in the summons taken out in this matter [*Or*, cause], dated the —— day of ——, 187—, named, as the applicant therein:

1. That the said summons may be dismissed with costs: on the ground that the same has been taken out without the authority of the said A. B.

2. That the respondent's costs of the said summons may be taxed.

3. That Mr. C. D., the solicitor (*Continue as in* No. 1143, *to the end*).

1146.
Affidavit in support of No. 1143, 1144, or 1145 (*n*).

In Chancery.
(*Title of the matter, or matter and cause, and reference to the record*).
I, A. B., of (*residence and addition*), in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as the applicant therein, make oath and say as follows:

1. On the —— day of ——, 187—, I for the first time became aware that the said summons had been taken out in my name, or on my behalf.

2. I am informed and believe that the object of the said summons is (*State, shortly, what; as thus:* to have the estate of G. H., deceased, administered under the direction of this honourable Court).

3. Mr. C. D., the solicitor by whom, as I am informed and believe, the said summons has been taken out, has not, nor has any person on his behalf, ever been authorised by me to take out the said summons, or to institute or prosecute any suit or proceeding in my name, or on my behalf, relating to the subject matter of the said summons. I have never consented to, or acquiesced in, and I desire to repudiate, the application made by the said summons.

4. *State any communication had with the solicitor who took out the summons, and explain the cause of any delay in applying, since the deponent discovered that the summons had been issued.*

5. *Show means of knowledge.*

Sworn (*&c.: see ante*, No. 12.)

1147.
Notice that a summons will be attended by counsel (*o*).

Formal parts: see ante, No. 54.
Take notice, that his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] will be attended by counsel on

(*m*) See *ante*, No. 1143, n. (*k*).

(*n*) See Dan. Pr. 1051; and see *ante*, No. 645.

(*o*) See Dan. Pr. 1057, n. (*f*). As to the attendance of counsel in Chambers, see *ib.* 1056, 1057; and as to the costs of such attendance, *ib.* 1057; Ord. XL. 29.

behalf of the plaintiff [*or as may be*], on the hearing by his lordship [*Or*, honour] of the summons, dated the —— day of ——, 187—, taken out in this cause [*Or*, matter] on behalf of the plaintiff [*or as may be*].

1148.

Notice of new appointment for the further consideration of a summons (*p*).

Formal parts: see ante, No. 54.

Take notice, that the Chief Clerk of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——] has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, for the further consideration, at the Chambers of the said Judge, of the matter of the application made by the summons dated the —— day of ——, 187—, taken out in this cause [*Or*, matter] on behalf of the plaintiff [*or as may be*].

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2. *Transfer of suit or matter originated by Summons.*

1149.

Motion paper, for the transfer from one branch of the Court to another, of a matter, or matter and cause, originated by summons (*q*).

Formal parts: see ante, No. 53.

To apply, on behalf of all parties, to the Lord Chancellor, or the Lords Justices, that this matter [*Or*, matter and cause]: which was commenced by summons dated the ——, 187—, issued from the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——] : may be transferred from the said Judge to the Vice-Chancellor —— [*Or*, Master of the Rolls]. And to apply to the (*Names of the Judges from and to whom the transfer is to be made*), for their consent to such transfer being made.

1150.

Notice of motion, for the like (*r*).

Formal parts of notice of motion to the L. C., or L.JJ.: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that this matter [*Or*, matter and cause] may be transferred from the Master of the Rolls [*Or*, Vice-Chancellor——] to the Vice-Chancellor —— [*Or*, Master of the Rolls].

(*p*) See Dan. Pr. 1055. As to the attendance upon summonses, continuation of the proceedings by adjournment, and the course where a break occurs in the adjournments, see *ib.*; Ord. XXXV. 14. As to proceeding *ex parte*, re-consideration of *ex parte* proceedings, and awarding costs against absent parties, see Dan. Pr. 1055, 1056; Ord. XXXV. 10, 11; XL. 31. As to the costs of attendance of parties attending without leave, see Ord. XL. 28.

(*q*) See *ante*, No. 199, and note thereto.

(*r*) *Ibid.*; and see *ante*, No. 200. For order in like case, see *Re Wesson, Salter* v. *Tildesley*, L.JJ. & M. R., 19 Jan. 1865, Reg. Lib. B. 173; and see Seton, 1268, No. 4.

1151.
Motion paper, for leave to give such notice (*s*).

Formal parts: see ante, No. 53.

To apply on behalf of the plaintiff [*or as may be*], to the Lord Chancellor, or the Lords Justices, for leave to give the annexed notice of motion (*t*); and to apply to the (*Names of the Judges from and to whom the transfer is to be made*), for their consent to the transfer therein mentioned being made.

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3. *Statements and Evidence* (*u*).

1152.
Formal parts of a concise statement for chambers.

In Chancery.

(*Short title, and reference to the record.*)

Concise statement of the plaintiff [*Or*, defendant A. B.—*or as may be*], as to (*State what; as thus:* the residuary legatees of the testator A. B.), in answer to the first inquiry directed by the decree [*Or*, order] dated the ——, 187— [*or as may be*].

1.
2. } (*Set out the facts, in numbered paragraphs.*)
3.

1153.
Petition of course, for leave to use proceedings in another cause, as evidence at chambers (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. By the decree [*Or*, an order] made by your lordship [*Or*, by his honour the Vice-Chancellor ——, *or as may be*], dated the —— day of ——, 187—, certain accounts and inquiries are

(*s*) See *ante*, No. 201.

(*t*) Annex a copy of the notice.

(*u*) See Dan. Pr. 1057. As to when concise statements and other documents may be required to be supplied for the use of the Judge and his Chief Clerk, and as to furnishing copies of documents, see *ib.*; Ord. XXXV. 26. All accounts, copies, and papers, left at Chambers, are to be written upon foolscap paper, bookwise: unless the nature of the document renders it impracticable so to do: Regul. 8 Aug. 1857, r. 17. As to the mode of adducing evidence at Chambers, and the rules of evidence applicable therein, see Dan. Pr. 1058; Ord. XXXV. 28; Ord. 5 Feb. 1861, r. 15; and as to evidence, generally, see Dan. Pr. 738—826; and *ante*, Nos. 731—850, and notes thereto. As to exhibiting, instead of annexing, accounts and other documents to affidavits, marking the short title on certificates or exhibits, and authenticating alterations in accounts, see Dan. Pr. 1059; Regul. 8 Aug. 1857, rr. 10—12; and *ante*, No. 9, n. (*q*). For form of memorandum of identity of an exhibit, see *ante*, No. 43.

(*x*) For orders in like cases, see *Re Veysey*, M. R., 19 July, 1866; *Lewis* v. *Broad*, M. R., 2 Dec. 1869; *Saull* v. *Brown*, M. R., 2 July, 1870: all in Rolls Lib. For forms of motion paper, petition, and summons, to use, at the hearing, evidence taken in other causes, see *ante*, Nos. 735—737; and see notes thereto.

directed to be taken and made [*or as may be*]: in which your petitioner is interested.

2. Your petitioner is advised to read as evidence, in the prosecution of the said accounts and inquiries, the documents hereinafter mentioned.

Your petitioner therefore humbly prays, that he may be at liberty, upon the accounts and inquiries directed by the said decree [*Or*, order], to read and make use of the following documents; namely: (*Describe the documents, and the suit or matter in which filed, &c.: see ante*, No. 735): saving all just exceptions.

And your petitioner will ever pray, &c.

1154.

Summons, for leave to use proceedings in other causes, as evidence at chambers (*a*).

Formal parts: see ante, No. 60.

on the part of A. B.: who has liberty to attend the proceedings under the decree dated the —— of ——, 187—: that the applicant, and the plaintiff and defendant, or any person having liberty to attend, or seeking to be admitted as a creditor, may be at liberty to read, in the prosecution of the accounts and inquiries in this suit, the evidence which has been taken, or shall be adduced, in the causes of S. *v.* G. (1861. S. 204), and B. *v.* S. (1862. B. 102), or either of them: saving all just exceptions.

1155.

Summons, to limit a time for taking evidence (*b*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the evidence to be adduced by A. B. [*or as may be*], in support of

Or, in opposition to—*Or*, in reply to the evidence in support of

the claim made by A. B. under the account [*Or*, inquiry] numbered (5) in the decree [*Or*, order] dated the —— day of ——, 187— [*or as may be*], may be closed on the —— day of ——, 187—.

1156.

Summons, for further time to adduce evidence (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the time limited for the applicant to adduce evidence in opposition to the claim made by A. B. [*or as may be*], under the account [*Or*, inquiry] numbered (5) in the decree [*Or*, order] dated the —— day of ——, 187—, may be enlarged to the —— day of ——, 187—.

(*a*) *Dunn* **v.** *Turquand*, V. C. S. at Chambers, 9 Mar. 1864, Reg. Lib. A. 576.

(*b*) See Dan. Pr. 1058, 1064; Ord. XXXV. 40.

(*c*) *Ibid*; Ord. XXXVII. 17.

1157.

Notice of intention to use an affidavit, or affirmation, on a proceeding at Chambers (*d*).

Formal parts: see ante, No. 54.

Take notice, that the plaintiff [*or as may be*] intends to use, on (*State on what proceeding; as thus:*

the hearing of the summons taken out on his behalf, dated the ——, 187—,

Or, the prosecution of the accounts and inquiries directed by the decree [*Or*, order] dated the ——, 187—, *or as may be*), the affidavit [*Or*, affirmation] of A. B., filed in this matter [*Or*, cause] on the ——, 187—.

Or, the following affidavits and affirmation filed in this cause [*Or*, matter]; namely: the joint affidavit of A. B. and C. D., filed ——, 187—, the affidavit of E. F., and the affirmation of G. H., both filed ——, 187—, *or as may be*.

1158.

Chief Clerk's summons, for the attendance of a party or witness, to be examined—and to produce documents (*e*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

The plaintiff A. B.

Or, The defendant A. B.

Or, A. B., of (*residence and addition*),

Or, A. B., of, *&c.*, and C. D., of, *&c.*,

is [*Or*, are] hereby summoned to attend at the Chambers of the Master of the Rolls [*Or*, of the Vice-Chancellor——], in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be: see ante*, No. 1123], on ——, the —— day of ——,187—, at —— of the clock in the ——noon,

If the person summoned is a party to the suit, add: to be examined,

But if he is not, add: to be examined as a witness,

on the part of (*State whom; as thus:*

the defendant E. F.—*Or*, the plaintiff—*Or*, G. H.),

for the purpose of the proceedings directed by the Master of the Rolls [*Or*, the said Vice-Chancellor] to be taken before me.

If the person served is required to produce documents, add (*f*)*:* And the said A. B. is hereby also required then and there to

(*d*) As to when this notice must be given, see Dan. Pr. 1058; Ord. XXXV. 27; and see *ante*, No. 46.

(*e*) See Dan. Pr. 1044, 1059. The form here given is adapted from the form in Sched. K. No. 3, to Cons. Ord.: which may be used with such variations as the circumstances of the case may require: Ord. XXXV. 4. As to the power of the Chief Clerk to examine parties and witnesses *viva voce*, see 15 & 16 Vic. c. 80, s. 30; Dan. Pr. 1044. The summons may contain the names of three witnesses, where necessary or required: Dan. Pr. 1059. As to the expenses of the persons summoned, see *ib.* 803, 1060; and see *post*, Chap. XXXI.

(*f*) See Dan. Pr. 1059.

bring with him and produce the following documents; that is to say: (*Specify the documents to be produced* (*g*)).
Dated this —— day of ——, 187—.

R. M., Chief Clerk.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for the defendant E. F. [*or as may be* (*h*): *see ante*, No. 4 *or* 7].

1159.

Direction to seal a *subpœna*, for a party or witness to produce documents at chambers (*i*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers.
(*Short title, and reference to the record.*)
The Master of the Rolls [*Or*, Vice-Chancellor ——] directs that a *subpœna ad test.*, and *duces tecum*, be sealed on behalf of the defendant E. F. [*or as may be*], for the attendance of the plaintiff A. B [*or as may be*], at Chambers. Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1160.

Præcipe for the *subpœna* (*k*).

In Chancery.
(*Short title.*) (*Reference to the record.*)
Seal a *subpœna ad test.*, and *duces tecum*, on behalf of the defendant E. F. [*or as may be*], directed to (*Insert the names of the persons to produce*).
Tested —— day of ——, 187—.
(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1161.

The *subpœna* (*l*).

Victoria (*&c.: see ante*, No. 313).
To (*Insert the names of the persons to produce*), greeting:
We command you (*If more than one, add:* and every of you), that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor Sir John Stuart—*or as may be*], at the Chambers of the said Judge, situate (*State where: see ante*, No. 1123), at such times as the bearer hereof shall by notice in

(*g*) For the mode of describing documents, see *ante*, No. 745; and as to the degree of particularity required, see *ante*, No. 763, n. (*s*).

(*h*) See *ante*, No. 1123, n. (*h*).

(*i*) See Ord. XXXV. 29; Braithwaite's Pr. 256. It would seem, however, that the *subpœna* is not now necessary: see Dan. Pr. 1060; and No. 1158, *ante*.

(*k*) See *ante*, No. 1159, n. (*i*).

(*l*) *Ibid.* The above form is adapted from the form of *subpœna* for the attendance of a party or witness before an examiner, sanctioned by Ord. XXVIII. 2, and Sched. E. No. 3, *ante*, No. 806: there being no prescribed form of a *subpœna* to attend, or attend and produce documents, at Chambers.

writing appoint (*m*), to testify the truth according to your knowledge in a certain suit now depending in our High Court of Chancery wherein B. A. is plaintiff, and D. C. is defendant :

Or, wherein B. A. and others [*Or*, another] are plaintiffs, and D. C. and others [*Or*, another] are defendants :

Or, in a certain matter there depending, intituled, In the matter of —— :

on the part of the defendant E. F. [*or as may be*] ; and that you then and there bring with you and produce (*Specify the documents to be produced* (*n*)). And hereof fail not at your peril. Witness (*&c. : Conclude as in* No. 313, *ante*).

1162.

Indorsement on the writ (*o*).

The same as No. 4, or 7, *ante*.

1163.

Notice to witness of time for attendance (*p*).

Formal parts : see ante, No. 54.

Take notice, that ——, the —— of ——, 187—, at —— of the clock in the —— noon, is hereby appointed as the time at which you are to attend before R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*or as may be*], at the Chambers of the said Judge, to give evidence, in obedience to the *subpœna*, dated the —— day of ——, 187—, directed to you in this cause [*Or*, matter].

1164.

Notice of motion, that a person refusing to obey a chief clerk's summons may be ordered to attend (*q*).

Formal parts : see ante, No. 55.

on the part of the plaintiff [*or as may be*], that E. F., of (*residence and addition*) : who has been served with a summons, signed by R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*Or*, Vice-Chancellor ——],

If so : and with a *subpœna*,

to attend and be examined [*Or*, be examined as a witness] for the plaintiff [*or as may be*],

If so, add : and to produce the documents therein specified, before the said Chief Clerk, for the purpose of the proceedings

(*m*) See *post*, No. 1163, and note thereto.

(*n*) See *ante*, No. 1158, n. (*g*).

(*o*) See Dan. Pr. 802.

(*p*) See form of *subpœna*, *ante*, No. 1161. It is presumed that, where the *subpœna* is accompanied by a Chief Clerk's summons, specifying the time of attendance (see *ante*, No. 1158), a formal notice of such time, in addition, will be unnecessary.

(*q*) As to the process to compel the attendance of a party or witness before a Chief Clerk, see Dan. Pr. 1044, 1059 ; 15 & 16 Vic. c. 80, s. 31 ; and see *ante*, No. 810, *et seq.* : which can be readily adapted to this case. As to the course, where the person summoned attends before the Chief Clerk, but declines to be examined, or answers unsatisfactorily, see Dan. Pr. 1060.

directed by the said Judge to be taken before the said Chief Clerk, but has neglected or refused to attend and be sworn :

If so : and produce the said documents :

may be ordered to attend, at his own expense, and be sworn and examined,

If so : and to produce such documents,

as aforesaid, at the Chambers of the said Judge, at such time as the said Chief Clerk shall appoint ; and that the said A. B. may be ordered to pay the costs of this application.

1165. Affidavit in support (*r*).

Formal parts : see ante, No. 9.

1. On ——, the —— day of ——, 187—, I served (*Describe the person served ; as thus :*

the plaintiff A. B.—*Or*, the defendant A. B.,

Or, A. B., the person named in the summons hereinafter mentioned),

with a summons in this cause [*Or*, matter], dated the —— day of ——, 187—, issued from the Chambers of the Master of the Rolls [*Or*, of the Vice-Chancellor ——], and signed by R. M., esquire, one of the Chief Clerks of the said Judge : by delivering to, and leaving with, the said A. B., personally, at (*State where*), in the (county) of ——, a true copy of the said summons ; and I at the same time showed the said summons to the said A. B.

2. By the said summons the said A. B. was required to attend (*Recite the body of the summons : substituting* "this cause," *or* "this matter," *for the description therein of the cause, or matter*).

3. There was at the foot (*Continue as in par.* 2, *of* No. 50, *ante, to the end of that par.*).

Where a subpœna is also served, add : 4. At the time of the service aforesaid of the said summons (*s*), I also served the said A. B. with a *subpœna* dated the —— day of ——, 187—, issued out of, and under the seal of, this honourable Court, by delivering to, and leaving with, the said A. B. (*s*) a true copy of the said *subpœna*, and of an indorsement thereon, in the form prescribed by the General Order of this honourable Court in that behalf ; and I, at the time of such service, showed to the said A. B. the said *subpœna* so under seal as aforesaid.

5. By the said *subpœna* the said A. B. was commanded to appear before (*Recite the subpœna, to* knowledge), in this suit [*Or*, matter], on the part of (*State whom, as in the subpœna—and continue thus*) ; and the said A. B. was thereby also com-

(*r*) See *ante*, No. 1164, n. (*q*),

(*s*) If the summons and *subpœna* were not served together, vary this statement, by showing the time and place of service of the *subpœna :* see *ante*, No. 811.

manded to bring with him and produce certain documents therein specified.

6. *Prove service of notice of the time of attendance; as thus:* At the time of the aforesaid service of the said *subpœna* (*t*), I delivered to, and left with, the said A. B., a notice in writing, intituled in this cause [*Or*, matter], and addressed to the said A. B., and purporting that ——, the —— day (*Recite the body of the notice*).

7. *Prove default of the party summoned; as thus:* On ——, the —— day of ——, 187—, at —— of the clock in the ——noon, the time appointed for the attendance of the said A. B., as aforesaid, I attended before the said Chief Clerk, at the Chambers of the said Judge; but the said A. B. did not then and there attend to be examined (*If so:* and produce the said documents), as aforesaid; and the said A. B. has neglected or refused to obey the said summons (*If so:* and *subpœna*).

8. *Prove service of the notice of motion to attend: see ante,* No. 47

1166.

Direction to an examiner, to take the examination of a witness (*u*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers. } (*Date.*)

(*Short title, and reference to the record.*)

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that one of the examiners of this Court do take the examination of the defendant A. B. [*or as may be*],

Or, the cross-examination of A. B., on his affidavit filed ——, 187— [*or as may be*],

for the purpose of the proceedings directed to be taken by the decree [*Or*, order] in this cause [*Or*, matter], dated the ——, 187—, [*or as may be*].

R. M., Chief Clerk.

1167.

Summons to appoint a special examiner of witnesses, and affidavit in support (*v*).

See *ante*, No. 799, *et seq.*: which can be readily adapted to a case where the examination is required for the purpose of proceedings at Chambers.

(*t*) If the *subpœna* and notice were not served together, vary this statement, by showing the time and place of service of the notice. As to the Chief Clerk's summons being sufficient notice of the time, see *ante*, No. 1163, n. (*p*).

(*u*) See Dan. Pr. 1059, 1061. As to procuring the attendance of witnesses before the examiner, see *ib.*; and *ante*, No. 805, *et seq.*

(*v*) See *ante*, No. 799, *et seq.*, and notes thereto. For order appointing a special examiner of witnesses in Australia, as to particular claims made under a decree, see *Cooper* v. *Macdonald*, cited *ante*, No. 801, n. (*c*).

1168.
Motion paper, for a *habeas*, where the person to be examined is in prison (*x*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that a *habeas* may issue, directed to the keeper of the City of London prison at Holloway [*or as may be: see ante*, No. 308], to bring E. F. before the Chief Clerk of the Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers [*Or*, before an examiner of this Court—*or as may be*], on the ——, 187—, and on such other days as he shall appoint: to be examined as a witness for the plaintiff [*or as may be*].

An affidavit in support, and the keeper's certificate of custody, accompany.

1169.
Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *Show state of the cause, or matter; as thus:* Pursuant to the decree [*Or*, an order] dated the —— day of ——, 187—, certain accounts and inquiries are now being taken and made by the Chief Clerk of your lordship [*Or*, of his honour the Vice-Chancellor ——]: in which your petitioner is interested.

2. *Show grounds for requiring the attendance of the prisoner; as thus:* E. F., now a prisoner in the City of London prison at Holloway [*or as may be*], is a material witness for your petitioner on the said accounts and inquiries; and your petitioner is advised to examine the said E. F., *vivâ voce*, before the said Chief Clerk [*or as may be*].

3. Your petitioner has caused the said E. F. to be served with a Chief Clerk's summons [*Or*, with a *subpœna* and notice] to attend and be examined before the said Chief Clerk [*or as may be*]; but by reason of the said E. F. being a prisoner as aforesaid, he is unable to obey the said summons [*Or*, *subpœna*].

Your petitioner therefore humbly prays, that a writ of *habeas corpus* may issue, directed to the keeper of the said prison, to bring the said E. F. before the said Chief Clerk [*Or*, Examiner], at (*State where; as thus:*

your lordship's Chambers—*Or*, the Chambers of the said Vice-Chancellor ——, *or as may be*),

on (*State when*), and on such other days as the said Chief Clerk [*Or*, Examiner] shall appoint: to be examined as a witness for your petitioner [*or as may be*].

And your petitioner will ever pray, &c.

(*x*) See Dan. Pr. 1060; and *ante*, Nos. 817, 818. For order to attend at chambers, in like case, see *Buckeridge* v. *Whalley*, 6 W. R. 180, V. C. K.; and before an examiner, see Seton, 1275, No. 3.

1170.
Affidavit, in support of motion or petition for a *habeas* (*y*).

Formal parts: see ante, No. 9.
1—3. *State the facts, as in* No. 1169, *ante: substituting* "the plaintiff," *or as may be, for* "your petitioner."
4. *Show means of knowledge.*

1171.
Præcipe for the writ (*z*).

The same as No. 390, *ante;* but describe the writ as a *habeas corpus ad test.—If so:* and *duces tecum.*

1172.
The writ (*a*).

Proceed as in No. 770, *ante, to* greeting:
We command you, that you have the body of E. F., detained in your prison under your custody, as it is said, under safe and secure conduct before R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*Or*, Vice-Chancellor ——, *or as may be* (*b*)], at (*State where*; *as thus:* the Chambers of the said Judge in Rolls' Yard, Chancery Lane, Middlesex—*or as may be: see ante*, No. 1123), on ——, the —— day of ——, instant [*Or*, next], by —— of the clock in the ——noon of the same day, and on such other days as the said Chief Clerk [*Or*, Examiner] shall appoint, then and there to testify the truth, according to his knowledge, in a certain suit now depending in our High Court of Chancery wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

Or, in a certain matter there depending, intituled, In the matter of ——,

on the part of the plaintiff [*or as may be*]; and immediately after the said E. F. shall then and there have given his testimony before the said Chief Clerk [*Or*, Examiner], that you return him, the said E. F., to our said prison, under safe and secure conduct; and have there then this writ. Witness (*&c.: Conclude as in* No. 313, *ante*).

1173.
Indorsement on the writ (*c*).

The same as No. 392, *ante.*

(*y*) See Dan. Pr. 1060.

(*z*) *Ibid.* The order to issue the writ must be produced at the time the writ is sealed.

(*a*) See Dan. Pr. 1060; and see note to No. 770, *ante.*

(*b*) See *ante*, No. 1123. Where the examination is to be taken before an examiner, vary the writ accordingly: as in *ante*, No. 821.

(*c*) See *ante*, No. 392, n. (*b*).

The same as Nos. 782—788, *ante*.

1174. Oaths and affirmations of witnesses, before a chief clerk, or examiner (*d*).

1175. Formal parts of depositions of witnesses examined in chief before a chief clerk (*e*).

In Chancery.

(*Set out the full title of the cause or matter, and the reference to the record.*)

Deposition of a witness [*Or*, Depositions of witnesses] examined in the above cause [*Or*, matter],

before me,

R. M., Chief Clerk.

Sworn the —— day of ——, 187—. } A. B, of (*residence and addition*), examined on behalf of the plaintiff [*or as may be*], saith as follows:—

I was not, *&c.*

—— day of ——, 187—. } Examination continued:—

When I saw, *&c.*

Cross-examined on behalf of the defendant C. D. [*or as may be*]:—

I am, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*]:—

I shall, *&c.*

Cross-examined on behalf of the defendant C. D. [*or as may be*], upon new matter in the re-examination:—

Having now seen, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*]:—

My impression still is, *&c.*

A. B.

Sworn the —— day of ——, 187—. } E. F., of (*&c.: as above*).

I hereby certify that the evidence contained in this and the —— preceding sheets of paper was taken by me, and was afterwards read over to the witness [*Or*, respective witnesses], and signed by him [*Or*, them], in the presence of the parties attending.

R. M., Chief Clerk.

(*d*) See notes to Nos. 782—788, *ante*. As to the power of a Chief Clerk to administer an oath, or receive an affirmation, see 15 & 16 Vic. c. 80, s. 30; Dan. Pr. 1044.

(*e*) See Dan. Pr. 1060; Ord. XXXV. 30; Ord. 5 Feb. 1861, r. 15. As to the mode in which the depositions should be written, and alterations therein authenticated, see *ante*, No. 795, n. (*l*). As to filing the depositions, and obtaining copies, see Dan. Pr. 1060; Ord. XXXV. 31. The fee for an office copy is 4*d*. per folio: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

1176.
Formal parts of deposition of a witness cross-examined on his affidavit, before a chief clerk (*f*).

In Chancery.

(*Set out the full title of the cause or matter, and the reference to the record.*)

Deposition of a witness cross-examined in the above cause [*Or*, matter],

before me,

R. M., Chief Clerk.

Sworn the —— day of ——, 187—. A. B., cross-examined on behalf of the defendant C. D. [*or as may be*], on his affidavit filed the —— day of ——, 187—, in this cause [*Or*, matter], saith as follows:—

I was lately, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*]:—

I think it was, *&c.*

Cross-examined on behalf of the defendant C. D. [*or as may be*], upon new matter in the re-examination:—

Having now seen, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*]:—

My impression is, *&c.*

A. B.

I hereby certify (*Continue as in* No. 1175, *ante, to the end*).

1177.
Depositions taken before an examiner (*g*).

The same as Nos. 823, 824, 828, 829, *ante*.

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4. *Examination on Interrogatories* (*h*).

1178.
Formal parts of interrogatories, for the examination of a party or witness before a chief clerk (*i*).

In Chancery.

(*Full title of the cause or matter, and reference to the record.*)

Interrogatories exhibited on the part of the above named plaintiff A. B. [*or as may be*], for the examination of the above named defendant C. D. [*or as may be*], for the purpose of the proceedings directed by his lordship the

(*f*) See Dan. Pr. 1064; and *ante*, No. 1175, n. (*e*).

(*g*) See Dan. Pr. 800, 1061, 1064, *et seq.*; Ord. XIX. 11; Ord. 5 Feb. 1861, r. 15. As to the mode of compelling the attendance of witnesses before an examiner, see *ante*, No. 805, *et seq.*, and notes thereto.

(*h*) As to the power of the Chief Clerk to examine parties and witnesses on interrogatories, see 15 & 16 Vic. c. 80, s. 30; Dan. Pr. 1044.

(*i*) Dan. Pr. 1061. For forms of interrogatories for the examination of parties and witnesses before a Master in Ordinary: which can readily be adapted to a like examination before a Chief Clerk: see 2 Van Hey. 274—319—329; Bennett's M. O., Appx. 33—37; 2 Grant, 162—165. For the practice at

Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] to be taken, pursuant to the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—.

1. Do you know, *&c.*
2. Were you present, *&c.*
3. Did not, *&c.*

(*Name of counsel* (*k*)).

1179. Notice of appointment to settle interrogatories (*l*).

Formal parts: see ante, No. 54.

Take notice, that the Chief Clerk of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——] has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, at the Chambers of the said Judge, to settle the interrogatories for the examination of the plaintiff A. B. [*or as may be*], under the decree [*Or*, order] dated the —— day of ——, 187—.

1180. Memorandum of allowance of interrogatories (*m*).

——, 187—.

(*Short title.*)

These interrogatories have been settled and allowed.

R. M., Chief Clerk.

1181. Notice of allowance of interrogatories (*n*).

Formal parts: see ante, No. 54.

Take notice, that interrogatories have been settled and allowed at the Chambers of his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], for the examination of the plaintiff [*or as may be*], under the decree [*Or*, order] dated the ——, 187—; and that such interrogatories have been left, in duplicate, at the said Chambers.

1182. Summons to limit a time for filing the examination (*o*).

Formal parts, see ante, No. 60.

on the part of the defendant C. D. [*or as may be*], that the plaintiff A. B. [*or as may be*], may be ordered, within (four) days after service of the order to be made hereon, to file in the office of

chambers as to such examination, see Dan. Pr. 1061—1064; and in the Masters' office, see Dan. Pr. 1144—1148, 2nd. ed.; Bennett's M. O., Index, 160, 161; 1 Grant, 309, *et seq.*

(*k*) Counsel's signature is only necessary to interrogatories for the examination of a witness: Dan. Pr. 1061.

(*l*) See Dan. Pr. 1061.

(*m*) *Ibid.* The interrogatories, when settled at Chambers, are to be written, in duplicate, on paper of the same description and size as that on which bills are printed: *ib.*; Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195.

(*n*) See Dan. Pr. 1061.

(*o*) *Ibid.* For order in like case, see Seton, 1232, No. 2. For affidavit

the Clerks of Records and Writs his answer and examination to the interrogatories settled and allowed for that purpose, under the decree [*Or*, order] dated the —— day of ——, 187—.

1183.

Summons for further time to file the examination (*p*).

Formal parts, see ante, No. 60.

on the part of the plaintiff A. B, [*or as may be*], that he may have (one month's) further time to file his answer and examination to the interrogatories settled and allowed for his examination, under the decree [*Or*, order] dated the —— day of ——, 187—.

1184.

Formal parts of the examination (*q*).

In Chancery.

(*Full title of the cause or matter, and reference to the record.*)

The answer and examination of the above named plaintiff A. B. [*or as may be*], to the interrogatories exhibited (*Continue as in* No. 1178, *ante, to the end of the heading*).

In answer to the said interrogatories I, the plaintiff A. B. [*or as may be*], say as follows :—

1. To the first interrogatory :—I believe, *&c.*
2. To the second interrogatory :—I have, *&c.*

Sworn (*&c. : see ante*, No. 12).

1185.

Notice of having filed the examination (*r*).

Formal parts : see ante, No. 54.

Take notice, that I have this day filed the answer and examination of the plaintiff A. B. [*or as may be*], to the interrogatories settled and allowed for his examination, under the decree [*Or*, order], dated the ——, 187—.

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of service of the order, see *ante*, No. 929; and for the mode of enforcing the order, see Dan. Pr. 903, *et seq.*, 1062; and *ante*, No. 922, *et seq.*

(*p*) See Dan. Pr. 1062; Ord. XXXVII. 17. For order in like case, see *Watkins* v. *Thomas*, M. R. at Chambers, 23 Dec. 1869, Reg. Lib. B. 3157.

(*q*) See Dan. Pr. 1062. The examination must be written on paper of the same description and size as that on which bills are printed : *ib.* ; Ord. 6 Mar. 1860, r. 16 ; as to such paper, see *ante*, No. 195. The examination, must also be sworn in the same manner as a written answer : Dan. Pr. 1062 : as to which, see *ib.* 646, *et seq.* ; and *ante*, No. 558, *et seq.* The rules as to printing do not apply to an examination : Dan. Pr. 1063, n. (*y*). The examination, when sworn, is annexed to the duplicate of the interrogatories, and filed therewith at the Record and Writ Clerks' office : *ib.* 1063. For forms of examination in answer to interrogatories exhibited in the Masters' office, see 2 Van Hey. 122—126 ; Bennett's M. O. 37 ; 2 Grant, 166—169.

(*r*) See Dan. Pr. 1063. As to obtaining an office copy of the examination, see *ib.*

1186.
Motion paper, for discharge from custody, on filing the examination (*s*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that he may be discharged out of the custody of the keeper of the City of London prison at Holloway [*or as may be*], touching his contempt in not putting in his examination to interrogatories allowed for his examination under the decree [*Or*, order] dated ——, 187— : on payment, or tender, of the costs of such contempt to the solicitor or agent of the defendant [*or as may be*] : the examination having now been filed.

The Record and Writ Clerk's certificate of the filing of the examination, and the keeper's certificate of custody, accompany.

1187.
Petition of course, for the like (*s*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Your petitioner is in the custody of the keeper of the City of London prison at Holloway [*or as may be*], under a writ of attachment issued out of this honourable Court, for a contempt incurred by your petitioner in not filing his examination to certain interrogatories settled and allowed for that purpose, under the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—.

2. Your petitioner has now filed his examination in answer to the said interrogatories.

Your petitioner therefore humbly prays, that he may be discharged from the said custody, touching his said contempt : upon payment or tender of the costs thereof to the solicitor or agent of the defendant C. D. [*or as may be*].

And your petitioner will ever pray, *&c.*

1188.
Notice of appointment to consider sufficiency of the examination (*t*).

Formal parts : see ante, No. 54.

Take notice, that the Chief Clerk of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——] has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, at the Chambers of the said Judge, to consider the sufficiency of the answer and examination of the plaintiff A. B. [*or as may be*] to the interrogatories settled and allowed for his examination, under the decree [*Or*, order] dated the ——, 187—.

(*s*) See Dan. Pr. 1062.

(*t*) *Ibid.* 1063. For the rule of the Court, in determining as to the sufficiency of an examination, and as to the course where the examination is held to be insufficient, see *ib.* As to the costs of an insufficient examination, see Dan. Pr. 1063; and as to when a supplemental examination will be allowed, *ib.* 1064.

5. *Scientific Assistance* (*u*).

1189.
Letter of instructions to a scientific person (*x*).

Master of the Rolls' Chambers, *&c.*

SIR: ——, 187—.

(*Short title.*)

By the decree [*Or*, order] dated the ——, 187—, made by the Master of the Rolls [*Or*, Vice-Chancellor ——] in this cause [*Or*, matter], an account is directed to be taken [*Or*, an inquiry is directed to be made] as to (*State nature of the account or inquiry on which the assistance of the scientific person is sought*).

By consent of the plaintiff and defendant [*or as may be*], the Master of the Rolls [*Or*, Vice-Chancellor ——] has appointed you (*State what to do; as thus:* to inspect the said estate, and report to him what, in your opinion, is the amount of the abatement which ought to be made from the purchase money thereof, by reason of the plaintiff not being able to make a title to the close of land called Whiteacre, numbered 15 on the map, marked A, sent herewith).

I send you herewith the following documents: (*Specify them*).

Mr. A. B., of C., the plaintiff's solicitor, and Mr. D. E., of F., the defendant's solicitor, will furnish you with any further information you may require; and you will be so good as to communicate with them, and arrange as to the time and mode of entering upon your duties [*or as may be*].

I will thank you to forward your report to me, as soon as it is ready.

The Act of Parliament, 15th & 16th Victoria, Chapter 80, under which the Judge is empowered to obtain the assistance of a scientific person, provides, by section 43, that the allowance in respect of fees to such person shall be regulated by the Taxing Master of the Court of Chancery, subject to an appeal to the Judge to whose Court the cause is attached: whose decision is to be final; and you will please to consider that your appointment is made subject to this provision.

Be so good as to acknowledge the receipt of this communication.

I am, &c.,

To E. B., of, *&c.* R. M., Chief Clerk.

(*u*) As to the power of the Court or Judge to obtain, and the mode of obtaining, the assistance of a scientific person, and as to his fees, see Dan. Pr. 846, 1048; 15 & 16 Vic, c. 80, ss. 42, 43; and see, as to the fees of experts, *Churton* v. *Frewen*, W. N. (1867), 101: 15 W. R. 559, V. C. M. As to the fees allowed in Chancery to an accountant, see Dan. Pr. 1048, n. (*n*); and by the Court of Bankruptcy, see *post*, Chap. XXXI.

(*x*) See Dan. Pr. 1048.

1190.
Affidavit verifying the report of a scientific person (*y*).

Formal parts: see ante, No. 9.

The paper writing, marked A., now produced and shown to me, is the report made by me, pursuant to the instructions contained in the letter dated the —— day of ——, 187—, addressed to me in this cause [*Or*, matter] by R. M., esquire, Chief Clerk of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——].

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6. *Production of Documents at Chambers—Procuring information from the Bank Books.*

1191.
Notice to produce documents (*z*).

Formal parts: see ante, No. 54.

Take notice, that you are hereby required to produce to his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], and to his Chief Clerk, at the Chambers of the said Judge, on the hearing of the summons taken out on behalf of the plaintiff [*or as may be*], returnable on the —— day of ——, 187—,

Or, on the appointment, on the —— day of ——, 187—, to proceed with the accounts and inquiries directed by the decree [*Or*, order] dated the —— day of ——, 187— [*or as may be*],

the following documents; namely: (*Describe the documents to be produced; as thus:*

the probate of the will of A. B., the testator in the said summons named.

Or, the letters of administration of the personal estate of A. B., the intestate in the said summons named.

Or, the indenture dated the 10th of May, 1870, in the first schedule to the answer of the defendant A. B. mentioned.

Or, the agreement dated the 8th of June, 1869, in the affidavit of C. D., filed the ——, 187—, mentioned).

(*y*) See Dan. Pr. 1048. For form of affidavit by an accountant, of the result of his investigation of partnership accounts, see *post*, No. 1320.

(*z*) See Dan. Pr. 1065. As to discovery and production of documents at chambers, by parties or claimants, see *ib.* 1064, 1065; and *post*, No. 1237; 15 & 16 Vic. c. 80, s. 26; 15 & 16 Vic. c. 86, s. 13; Ord. XLII. 40; and for the practice, generally, see Dan. Pr. Chap. XLII.; and for forms incident thereto, see *post*, Chap. XLII. For forms of Chief Clerk's summons and *subpœna*, for production of documents at chambers, see *ante*, No. 1158, *et seq.* For form of memorandum, bespeaking attendance at chambers, with documents deposited in the Record and Writ Clerks' office, see *ante*, No. 738; and as to the production of documents so deposited, see Dan. Pr. 1065; and *ante*, No. 738, n. (*k*). As to the deposit, in the Record and Writ Clerks' office, of documents required for the purpose of any inquiry at chambers, see Dan. Pr. 1065; Ord. XLII. 3.

1192.

Request, by chief clerk, that the Bank of England will furnish information, from their books (*a*).

Master of the Rolls' Chambers, *&c.*
——, 187—.

Gentlemen:

In taking certain accounts, and answering certain inquiries, in these Chambers, under the decree [*Or*, order] dated the —— 187—, in the cause of A. *v.* B. [*or as may be*], it is requisite, for the due prosecution thereof, that the following information should be obtained from your books; namely: (*State what; as thus:* the date on which a sum of £1,000 Bank £3 per cent. annuities, standing, on the 1st of January, 1860, in the name of C. D., of (*residence and addition* (*b*), was transferred from such name, and to whom).

I am, therefore, directed by the Master of the Rolls [*Or*, Vice-Chancellor ——] to request, that you will please to direct such information to be furnished to me.

I am, *&c.*,
R. M., Chief Clerk.

To the Governor and Company of the Bank of England.

1193.

Request, by a solicitor, that the Bank of England will furnish him with a certificate of stock, &c., under 39 & 40 Geo. III. c. 36 (*c*).

(*Place of business, and date.*)

Gentlemen:

In a cause of A. *v.* B., now pending in the High Court of Chancery, my client, B. A., the plaintiff therein, is about to apply to that Court for an order to restrain you from suffering a transfer to be made of so much of a sum of £5,000 bank £3 per cent. annuities as is now standing in your books in the name of the defendant D. B., of (*residence and addition* (*b*)), and from paying any accrued or accruing dividends thereon; and also for a decree to compel the said D. B. to restore and make good so much of the said stock as has been sold or transferred by him.

I have, therefore, to request that, in conformity with the Act of Parliament, 39th & 40th George the 3rd, cap. 36, you will direct a certificate, signed by your Accountant, to be furnished to me, stating the amount of bank £3 per cent. annuities now standing in your books in the name of the said D. B., and the amount of dividends accrued thereon now unreceived.

I have also particularly to require that you will direct a like

(*a*) See Dan. Pr. 135, 1066. As to when information may be obtained from the bank books, on an application by the Chief Clerk, see *ib.* 1066. As to obtaining an inspection of accounts filed in the legacy duty department, see *ib.*

(*b*) This should, as near as possible, correspond with the description in the bank books.

(*c*) See Dan. Pr. 135, 1065; 39 & 40 Geo. III. c. 36, ss. 1, 2. The solicitor is entitled to a fee of 13*s.* 4*d.* for drawing, copying, and delivering the request at the bank; and the bank officer is entitled to a fee of 2*s.* 6*d.* for making out and delivering the certificate: *ib.* s. 2. In practice, the request is accompanied by a certificate of the filing of the bill, or administration summons: Dan. Pr. 1065, n. (*b*).

certificate to be furnished to me, stating when any part of the said £5,000 bank £3 per cent. annuities was transferred, and by whom such transfer was made.

I am, &c.,
X. Y.

To
The Governor and Company of the Bank of England.

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7. *Orders made at Chambers (d).*

1194. Formal parts of an order drawn up at chambers (*d*).

Master of the Rolls [*Or*, Vice-Chancellor ——] at Chambers (*e*). } (*Reference to the record.*) ——, the —— day of ——, 187—.

(*Title of the cause, or matter.*)

Upon the application of the plaintiff [*or as may be*], and hearing the solicitors for the applicant, and for the defendant [*or as may be:*

Or, no one attending for the defendant [*or as may be*], although he has been duly summoned to attend: as by the affidavit of A. B., filed the ——, 187—, appears]:

and upon reading (*State the evidence on which the order is made; as thus:*

the answer of the defendant C. D., filed the —— day of ——, 187—, to the original bill,

the joint and several answer of the defendants E. F., and G. H., filed, *&c.*, to the amended bill,

the probate of the will of L. M., the testator in the pleadings named, granted by Her Majesty's Court of Probate, Principal Registry [*Or*, District Registry of ——], on the ——, 187—, to the plaintiff,

letters of administration of the personal estate of N. O., the intestate in the pleadings named, granted by Her Majesty's Court of Probate, *&c.*, on, *&c.*, to, *&c.*,

the joint affidavit of P. R., and S. T., filed the ——, 187—,

(*d*) As to orders made at chambers, and when they are drawn up by the Chief Clerk, and when by the Registrar, see Dan. Pr. 1066; 15 & 16 Vic. c. 80, s. 14. As to the fees payable on such orders, see Regul. to Ord. Sched. 4; *post*, Chap. XXXI. As to the entry and enrolment of orders made at chambers, see Dan. Pr. 1067; Ord. XXXV. 32; 15 & 16 Vic. c. 80, s. 15. For the practice, generally, as to the entry and enrolment of orders, see Dan. Pr. 877, *et seq.*; and for forms of docket of orders made at chambers, see *ante*, Nos. 901, 904. As to appeals from orders made at chambers, see Dan. Pr. 1067; 15 & 16 Vic. c. 80, ss. 13, 15; see also *post*, Chap. XXXII. As to enforcing orders made at chambers, see Dan. Pr. 1067; and *ante*, No. 922, *et seq.*, and notes thereto. And see, generally, *ante*, No. 873, n. (*l*). For forms of affidavit of service of orders made at chambers, see *ante*, Nos. 48, 929. As to "four day orders," see Dan. Pr. 1069, n. (*d*).

(*e*) If made for another Judge, add here: "For Vice-Chancellor Stuart": or as may be: see Ord. VI. 11; Dan. Pr. 1068.

and the exhibits marked No. 1, and No. 2, therein referred to,
an affidavit of W. U., and an affidavit of V. Y., both filed the ——, 187—,
the deposition of C. A., filed the ——, 187—,
the cross-examination of the said W. U., filed the——, 187—,
and certain admissions, dated the ——, 187—, intituled in this cause, and signed by Mr. B. A., the solicitor for the plaintiff, and Mr. C. D., the solicitor for the defendant):
It is ordered that, *&c.* And it is ordered that, *&c.*

R. M., Chief Clerk.

1195.

Summons to discharge or rectify an order made at chambers (*f*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the order dated the ——, 187—, made at Chambers on the application of the defendant A. B. [*or as may be*], may be discharged.

Or, may be rectified in the respect following; namely: (*State what*).

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8. *Vacation business* (*g*).

1196.

Rota of Vacation Judges (*h*).

1870—1871:
The Vice-Chancellor Bacon.
1871—1872:
The Vice-Chancellor Stuart.
1872—1873:
The Master of the Rolls.
1873—1874:
The Vice-Chancellor Malins.
1874—1875:
The Vice-Chancellor Bacon.

(*f*) As to rectifying, on motion or petition, decrees and orders made in Court, see *ante*, Nos. 907, 908, and notes thereto.

(*g*) As to the arrangements for the transaction of the business of the Court and chambers during vacations, and the power of one Judge, during vacations, to make special orders for another, to sign and adopt the certificates of another Judge's Chief Clerk, and to allow decrees and orders of another Judge to be prosecuted at his chambers, and as to applications to discharge or vary such orders and certificates, see Dan. Pr. 1068, 1069; Ord. VI. 11; XXXV. 59.

(*h*) See Dan. Pr. 849, n. (*y*), 1067. The duties of the new Vacation Judge commence immediately on the rising of the Courts for the long vacation; and his chambers are open on certain days in every week, during each vacation, for the transaction of pressing business: *ib.* 849, 1067. Notices of such days, and of the mode of communicating with the Judge on matters not entertained

1197. Formal parts of a summons returnable at the chambers of another Judge, by his special leave (*i*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

Let all parties concerned attend at the Chambers of (*Name the Vacation Judge, and his Chambers; as thus:*

the Master of the Rolls, in the Rolls' Yard, Chancery Lane, Middlesex,

Or,

the Vice-Chancellor, Sir John Stuart, in Old Square, Lincoln's Inn, Middlesex,

Or,

the Vice-Chancellor, Sir Richard Malins, at No. 3, Stone Buildings, Lincoln's Inn, Middlesex,

Or,

the Vice-Chancellor, Sir James Bacon, at No. 11, New Square, Lincoln's Inn, Middlesex),

on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, by special leave of the (*Name the Vacation Judge; as thus:* Master of the Rolls—*Or*, said Vice-Chancellor), on the hearing (*Continue as in* No. 60, *ante, to the end*).

1198. Another form thereof (*i*).

Prepare the summons in the common form: *see ante*, Nos. 60, 1123; and write the following memorandum in the margin:—

By permission of the (*Name the Vacation Judge: as in* No. 1197), this summons is to be attended at his Chambers in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be: see ante*, No. 1197].

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9. *Scandal and Impertinence* (*l*).

1199. Summons to examine and expunge alleged scandalous matter (*m*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that (*Describe the document, and the particular passages therein alleged to be scandalous; as thus:*

the paragraph numbered 10 of the affidavit of the defendant

at chambers (such as applications for injunctions), are usually set up in the public offices, before the commencement of each vacation.

(*i*) See Dan. Pr. 1069; Ord. XXXV. 58.

(*l*) As to the remedy for scandal in proceedings at chambers, see Dan. Pr. 1069; Ord. XXXV. 60. For a definition of scandal, see Dan. Pr. 290. As to exceptions for scandal in a pleading or other matter depending before the Court, see *ante*, No. 61, *et seq.*, and notes thereto. As to impertinent or unnecessary matter in a proceeding at chambers, see Dan. Pr. 1069; Ord. XL. 10. For a definition of impertinence, see Dan. Pr. 291; and as to impertinence generally, see *ib.* 291, 292.

(*m*) See Dan. Pr. 1069.

A. B., filed the ——, 187—,

Or, the passage commencing with the words: "It is well known," and ending with the words: "to be punished," in page 2 of the concise statement left in my Chambers by the defendant A. B., on the ——, 187—),

may be examined; and that the said paragraph [*or as may be*] may be expunged therefrom, on the ground that the same is scandalous; and that the defendant A. B. may be ordered to pay the costs of this application [*or as may be*].

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10. *Allowance pending litigation* (*n*).

1200. Summons, for an allowance (*o*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that (*Describe the allowance required, and out of what fund; as thus:*

the whole of the annual income of the real and personal property [*or as may be*] of A. B., the testator in the pleadings named, may be allowed to the applicant, until the hearing of this cause;

Or, out of the annual income of the real and personal property [*or as may be*] of A. B., *&c.*, the annual sum of £200 may be allowed to the applicant, until, *&c.;*

Or, out of the personal property of A. B., *&c.*, the sum of £100 may be allowed to the applicant on account of his share thereof);

(*Describe the person or fund to pay; as thus:*

And that the defendants C. D., and E. F., the trustees and executors of the said will,

Or, And that the receiver appointed in this cause

may be directed to pay to the applicant the said annual income from time to time,

Or, the said annual sum of £200

by half-yearly payments on the —— day of ——, and —— day of ——: the first of such payments to be made on the —— day of ——, 187—.

Or, And that the said annual sum of £200 may be raised and paid to the applicant by half-yearly payments, *&c.*, out of the interest and corpus of the £—— bank £3 per cent. annuities remaining on the credit of this cause (*p*).

Or, And that out of the £—— cash in the bank, on the credit of this cause, the said £100 may be paid to the applicant (*p*).)

(*n*) As to when an allowance pending litigation will be made, see Dan. Pr. 1070; 15 & 16 Vic. c. 86, s. 57.

(*o*) See Dan. Pr. 1070.

(*p*) As to sales and payments out of a fund in Court, see *post*, Chap. XLI.

Section II.—Proceedings originating in Chambers (*q*).

1. *Administration of Estates on Summons* (*r*).

1201. Summons to administer an estate (*s*).

In Chancery.

In the matter of the estate of (*State the name, late residence, and addition of the person whose estate is to be administered; as thus:* John Thomas, late of the parish of Ash, in the county of Bedford, esquire, deceased):

Between (*Add the names of the intended plaintiff, or plaintiffs; as thus:* Joseph Wilson), ... plaintiff,

(*and where the plaintiff sues on behalf of himself and others, state so: see ante,* No. 155;

and where the plaintiff is under disability, add the name of a next friend: see ante, No. 155);

and

(*Add the names of the intended defendant or defendants; as thus:* William Jackson), ... defendant (*t*).

(*q*) See Dan. Pr. 1071—1082.

(*r*) As to the jurisdiction to administer an estate in a proceeding commenced by summons, see Dan. Pr. 1071—1076; 15 & 16 Vic. c. 86, ss. 45—47; and as to the statutory power of trustees to give receipts for proceeds of sale of realty, see 23 & 24 Vic. c. 145, s. 29; Dan. Pr. 1073, n. (*q*); and see 22 & 23 Vic. c. 35, ss. 14—18. For order to administer the personal estate at the instance of the purchaser of the share of a residuary legatee, see *Re Baldwin, Baldwin* v. *Bennett*, M. R. at Chambers, 8 Dec. 1869, Reg. Lib. A. 3041; and see Dan. Pr. 1071, n. (*p*). As to the equitable jurisdiction of the County Courts, see 28 & 29 Vic. c. 99; Dan. Pr. 1071, n. (*m*); and *post*, Chap. XLV. sec. 29.

(*s*) See Dan. Pr. 1073. The form here given is adapted from the form in Sched. K. No. 2, to Cons. Ord.: which may be used with such variations as the circumstances of the case may require: Ord. XXXV. 3. As to summonses, generally, and the practice as to preparing, issuing, and serving administration summonses, filing duplicates, and sealing copies for service, the paper on which duplicates must be written, recording the original summons, and marking the reference to the record, and as to the fees payable, see references in No. 1122, n. (*c*), *ante*. For form of authority to prosecute or defend a proceeding by administration summons, and of the authority of a next friend to use his name, see *post*, Chap. XLIV. As to the hearing of an administration summons, and subsequent proceedings, see Dan. Pr. 1074—1076. For the mandatory parts of a decree in a general administration suit, see *ante*, No. 870; and in a creditor's suit, No. 871. As to passing, entering, rectifying, enrolling, or appealing from, an order made on an administration summons, see *ante*, No. 873, *et seq.*, 1194, and notes thereto; and see *post*, Chap. XXXII. As to service of notice of the order, see *ante*, No. 252, *et seq.*, and notes thereto. As to the prosecution of the order at Chambers, see *post*, No. 1220, *et seq.* As to granting an injunction or receiver in a summons suit, see Dan. Pr. 1075.

(*t*) As to the parties to suits by summons, see references in No. 1122, n. (*c*), *ante*.

Upon the application of

(*Add the name of the plaintiff, and his residence and addition—or, where he is under disability, his name, and the name, residence and addition of a next friend: as in the case of bills: see ante,* No. 167, *et seq., and notes thereto; see also ante,* No. 55, n. (*t*)):

who claims to be

(*Show that the applicant is one of the persons, or the representative of one of the persons, described in the* 15 *&* 16 *Vic. c.* 86, *ss.* 45, 47, *as entitled to sue by summons; as thus:*)

a creditor upon the estate of the above named John Thomas:

Or, a specific [*Or*, pecuniary—*Or*, residuary] legatee under the will of the above named John Thomas:

Or, the next of kin [*Or*, one of the next of kin] of the above named John Thomas:

Or, (*where the summons relates to real estate*), interested under the will of the above named John Thomas):

Or, where the plaintiff claims in a representative character, state how; as thus:

who, as the executor [*Or*, administrator] of James Williams, late of (*residence and addition*), deceased,

Or, who, as the official [*Or*, creditors'] assignee of the estate and effects of [*Or*, trustee of the property of] James Williams, of, *&c.*, a bankrupt,

Or, who, by virtue of an indenture of assignment dated the —— day of ——, 187—, made between James Williams of the one part, and the applicant of the other part,

claims to be a creditor (*&c.: as above*):

Let (*Name the defendants, the legal representatives, and show in what character they are sued; as thus:* William Jackson, the executor [*Or*, administrator] of the said John Thomas,

Or, William Jackson: who is joint executor with the applicant of the said John Thomas (*u*),

Or, William Jackson, the surviving executor of the said John Thomas, and Edward Styles, the executor [*Or*, administrator] of Charles Hughes, the deceased executor of the said John Thomas,

Or, William Jackson, the administrator *de bonis non* of the said John Thomas, and Edward Styles, the executor of Charles Hughes, the deceased administrator of the said John Thomas,

Or, Edward Styles, the devisee in trust of the real estate of the said John Thomas, and William Jackson, his executor),

If there is any formal defendant: e.g., the husband of a married woman suing by her next friend: add his name here; as thus:

and also the above named Robert Brown,

attend at my Chambers in the Rolls' Yard (*&c.: see ante,* No.

(*t*) See note (*t*), previous page.

(*u*) See Dan. Pr. 1076, n. (*s*)

1123), on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, and show cause, if he [*Or*, they] can, why an order for the administration of the personal [*Or*, real and personal] estate of the said John Thomas [*or as may be*], by the High Court of Chancery, should not be granted. Dated (*Continue as in* No. 1123, *ante, to the end of that Form*).

1202.
Affidavit in support of an administration summons by a creditor (*x*).

Formal parts: *see ante*, No. 9.

1. *State the amount and nature of the debt, and any existing security for its payment; or negative the existence of any such security: as in* No. 1243, *et seq., post.*

2. *Prove that the defendants are the proper persons to be sued; as thus:* The said John Thomas died on or about the ——day of ——, 187—; and probate of his will has [*Or*, letters of administration of his personal estate have] been granted by Her Majesty's Court of Probate to the defendant William Jackson [*or as may be* (*y*)].

3. *Show means of knowledge.*

1203.
Affidavit in support of an administration summons by a specific, pecuniary, or residuary legatee (*z*).

Formal parts: *see ante*, No. 9.

1. *State, succinctly, the nature of the bequest; as thus:* The above named John Thomas, by his will dated the —— day of ——, 187—, bequeathed to me all his household furniture and effects.

Or, a legacy of £100, payable three months after his death.

Or, one fifth of the residue of his personal estate and effects.

Or, an annuity of £20 during my life.

2. *Prove that the defendant is the proper person to be sued; as thus:* The said John Thomas died on or about the —— day of ——, 187—, without having revoked or altered his said will; and probate of his will has been granted by Her Majesty's Court of Probate to the defendant William Jackson [*or as may be*].

3. *Show that the bequest has not been satisfied; as thus:* The

(*x*) As to the evidence required to support an administration summons, see Dan. Pr. 1073.

(*y*) The fact that the defendant is the legal personal representative of the deceased person should be established by production of the probate or letters of administration, or by other primary evidence of the grant; and where an administration of the real estate is sought, it must be shown that the whole of the real estate is vested in the person sued as its representative: see Dan. Pr. 1073. For form of notice to the defendant to produce the probate or letters, see *ante*, No. 1191. As to office copies of wills, and of grants of probate or letters of administration, see Probate rules, 80, 81 (Principal Registry), 94, 95 (District Registrars); Dodd & Brooks, 1031, 1076, 1095; Taylor on Evid. ss. 1427, 1428; and Dan. Pr. 773, n. (*n*).

(*z*) See Dan. Pr. 1073.

household furniture and effects bequeathed to me as aforesaid have not yet been delivered to me.

Or, The legacy of £100 bequeathed to me as aforesaid remains due to me from the said testator's estate.

Or, The share of residue bequeathed to me as aforesaid has not been accounted for or paid to me.

Or, I am now entitled to the said annuity of £20 bequeathed to me as aforesaid; but no provision to secure the due payment thereof has been made—*or as may be.*

4. *Show means of knowledge.*

1204.

Affidavit in support of an administration summons by a next of kin (*a*).

Formal parts: see ante, No. 9.

State the death of the person whose estate is to be administered, and show that the applicant is one of his next of kin; as thus: 1. The above named John Thomas died on or about the —— day of ——, 187—, a bachelor, and intestate; and without leaving any father, mother, sister, or brother him surviving.

2. The said John Thomas was the son of Charles Thomas, late of, *&c.* The said Charles Thomas had two children only; that is to say: (1) the said intestate John Thomas; and (2) my father Francis Thomas.

3. The said Francis Thomas died on or about the —— day of ——, 187—. The said Francis Thomas had three children only; that is to say: (1) my brother the defendant Edward Thomas; (2) my sister Mary, now the wife of William Hughes, of, *&c.;* and (3) me the deponent.

4. As a child of the intestate's said brother Francis Thomas, I claim to be one of the next of kin of the said intestate John Thomas; and, as such, to be entitled to a distributive share of his personal estate. Such share has not been paid or accounted for to me.

Show that the defendant is the proper person to be sued; as thus: 5. Letters of administration of the personal estate of the said John Thomas have been granted by Her Majesty's Court of Probate to the defendant Edward Thomas [*or as may be*].

1205.

The like, by a person interested in real estate (*a*).

Formal parts: see ante, No. 9.

State, succinctly, the nature of the applicant's interest under the will, and the persons to be sued; as thus: 1. The above named John Thomas, by his will dated the —— day of ——, 187—, devised all his real estate to the defendant Edward Styles, upon trust to sell and convert the same into money, and invest such money as therein mentioned; and to pay the income to accrue from such investment unto the testator's wife, Louisa Thomas, for her life; and after her death, to raise the sum of £1,000,

(*a*) See Dan. Pr. 1073.

out of the said trust estate, and pay the same to me, on my attainment of the age of twenty-one years; and the said testator appointed the defendant William Jackson executor of his will.

2. The said testator died on the —— of ——, 187—, without having revoked or altered his said will; and probate of the said will was on the —— day of ——, 187—, granted by Her Majesty's Court of Probate to the defendant William Jackson.

3. The defendant Edward Styles accepted the trust reposed in him by the said will; and he converted the testator's real estate into money, and made certain investments out of the proceeds thereof.

4. The testator's widow, the said Louisa Thomas, died on the —— day of ——, 187—; and I attained my age of twenty-one years on the —— day of ——, 187—.

5. I am now entitled to receive the said sum of £1000; but the defendant Edward Styles refuses or neglects to pay the same to me.

6. *Show means of knowledge.*

1206. Other forms incident to an administration summons (*b*).

Note of enlargement of the return: No. 1126.

Summons to amend, and order thereon: Nos. 1128, 1129.

Direction to amend duplicate: No. 1130.

Præcipe on stamping, or re-stamping, copy for service: No. 1131.

Summons for substituted service, and affidavit in support: Nos. 1132, 1133.

Summons for leave to serve abroad, and affidavit in support: Nos. 1135, 1136 (*c*).

Affidavit of service: No. 1137 (*d*). The like on a substitute: No. 1138.

Notice to produce probate or letters of administration, on return of summons: No. 1191 (*d*).

Præcipe for appearance: No. 1141 (*d*). Notice of appearance: No. 1142 (*d*).

Summons to dismiss an unauthorised summons: No. 1143; or strike out a co-applicant's name: No. 1144 (*e*). Affidavit in support: No. 1146.

(*b*) The forms here referred to may be readily adapted to a suit by administration summons; and it has not, therefore, been deemed necessary to repeat them. For references to Dan. Pr., and to the statutes and orders, see notes to the Forms referred to.

(*c*) See Dan. Pr. 1073. For order for leave to serve an administration summons in Scotland, see *Re Fobert, Wood* v. *Fobert*, V. C. M. at Chambers, 12 Feb. 1870, Reg. Lib. A. 267.

(*d*) See Dan. Pr. 1074.

(*e*) *Ibid.*, 1073. For orders dismissing an administration summons at the hearing, with costs, see *Re Humphreys, Andrews* v. *Jones*, V. C. W. at Chambers, 8 May, 1866, Reg. Lib. A. 1070; *Re Seaton, Northern Investment*,

Summons to dismiss administration summons, or stay proceedings, on submitting to satisfy plaintiff's demand: Nos. 668, 669 (*f*).

Notice of motion, or summons, to stay proceedings on special terms, by consent: No. 666; or till payment by plaintiff of costs incurred in the suit: No. 673.

Notice of motion, or summons, to stay proceedings in one of two concurrent creditor suits, after a decree in the other only: No. 674; and to stay a class suit, after decree: No. 675 (*g*).

Motion paper, or notice of motion, for the transfer of a suit originated by summons: Nos. 1149—1151.

Memorandum for the registry, or re-registry of a summons, as a *lis pendens*: No. 214. Acknowledgment of satisfaction thereof: No. 215. And petition of course, special petition, notice of motion, and summons, for the entry of satisfaction thereof: Nos. 216—218 (*h*).

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2. *Account of Debts and Liabilities, under* 13 *&* 14 *Vic. c.* 35 (*i*).

1207.

Motion paper, for an order to take the account (*k*).

In Chancery.

(*Branch of the Court: see ante,* No. 197 (*l*).)

In the Matter of the estate of (*State name, and late residence and addition of the deceased person; as thus:* John Thomas, late of No. 200, Russell Square, in the county of Middlesex, esquire), deceased.

Mr. G.

½ gua.

To move on behalf of A. B., and C. D., the executors [*Or,*

&c., Company, Limited, v. *Seaton,* M. R. 7 May, 1870, Reg. Lib. B. 1709 (on adjournment into Court).

(*f*) See Dan. Pr. 1075.

(*g*) *Ibid.* 1076.

(*h*) *Ibid.* 1073, n. (*m*).

(*i*) As to the jurisdiction to direct, on *ex parte* motion, or summons, an account to be taken of the debts and liabilities affecting the personal estate of a deceased person, see Dan. Pr. 1076—1082; 13 & 14 Vic. c. 35, ss. 19—25; 23 & 24 Vic. c. 38, s. 14; and see *post,* No. 1208, n. (*n*). As to the proof and provision for debts and liabilities, see Dan. Pr. 1078, *et seq.*; and as to interest, and costs of proof, and debts generally, see *post,* No. 1235, n. (*m*).

(*k*) See Dan. Pr. 1077; 13 & 14 Vic. c. 35, s. 19; 23 & 24 Vic. c. 38, s. 14. For orders in like case, see *Re Forbes,* M. R., 4 Dec. 1866, Reg. Lib. A. 2538; and Seton, 147. The form of order set out in the Sched. to 13 & 14 Vic. c. 35, is, in practice, abridged and varied as in Seton, 147: Dan. Pr. 1078, n. (*d*).

(*l*) The motion paper must be marked, at or near the top or upper part thereof, in the same manner as a bill is marked, with the name of the Lord Chancellor, and one of the Vice-Chancellors, or with the name of the Master of the Rolls: Ord. VI. 6; Dan. Pr. 1077. As to marking bills, see *ante,* No. 197, and n. (*s*), thereto; and as to transferring causes, see Dan. Pr. 68, 325, 700; and *ante,* Nos. 199—202, and notes thereto.

administrators] of the said (John Thomas), for the usual order to take an account of his debts and liabilities, under 13 & 14 Vic. c. 35, s. 19, and 23 & 24 Vic. c. 38, s. 14.

An affidavit in support accompanies (*m*).

(*Add name, &c., of solicitor or party instructing: see ante*, No. 4, *or* 7.)

1208.

Summons, for an order to take the account (*n*).

In Chancery.

In the Matter of (*&c.: as in ante*, No. 1207, *to* deceased).

Let all parties concerned (*Continue as in* No. 1123, *ante, to* noon (*o*),) on the hearing of an application on the part of A. B., of (*residence and addition*), and C. D., of, *&c.*, the executors [*Or*, administrators] of the said (John Thomas), that an account may be directed to be taken of the debts and liabilities affecting the personal estate of the said (John Thomas): with the usual directions. Dated (*&c.: Continue as in* No. 1123, *ante, to* applicant.)

1209.

Affidavit in support of motion or summons (*p*).

Formal parts: see ante, No. 9.

1. I am the executor [*Or*, one of the executors] of the will
Or, I am the administrator—*Or*, one of the administrators—
of the personal estate

of the above named (John Thomas), acting under probate of the said will

Or, letters of administration of the said estate

granted by Her Majesty's Court of Probate on the —— day of ——, 187— (*q*).

(*m*) See *post*, No. 1209.

(*n*) See Dan. Pr. 1077; 13 & 14 Vic. c. 35, s. 19; 23 & 24 Vic. c. 38, s. 14. By The Chancery (Ireland) Act, 1867 (30 & 31 Vic. c. 44), s. 52, it is enacted that the parts of Acts set out in Schedule A thereto shall be thereby repealed; and the schedule includes section 14 of 23 & 24 Vic. c. 38, which conferred the jurisdiction to make the order on summons; orders, have, however, since been made under that section on summons: see *Re Sutton*, V. C. S. at Chambers, 20 Dec. 1869, Reg. Lib. B. 3065; *Re Marshall*, M. R. at Chambers, 27 July, 1870, Reg. Lib. B. 2201; and see Dan. Pr. 1077, n. (*y*). A duplicate of the summons must be filed at the Record and Writ Clerks' office; but no copy for service is necessary: as the application is always made *ex parte*. For the practice as to preparing and issuing the summons, and filing the duplicate, see Dan. Pr. 1050, 1051; and as to marking thereon the "Reference to the Record," see *ante*, Nos. 1, 196. As to the fees payable on the summons and duplicate, see *ante*, No. 1122, n. (*c*).

(*o*) The summons may be made returnable at any time after it is issued: Dan. Pr. 1077.

(*p*) See Dan. Pr. 1078.

(*q*) The probate or letters of administration must be produced to the Registrar on the motion, or to the Chief Clerk on the hearing of the summons: see Dan. Pr. 1078.

2. The said John Thomas died on or about the —— day of ——, 187—.

3. There is not any suit or other proceeding now pending for the administration of the estate of the said John Thomas: to the best of my knowledge, information and belief.

1210.

Summons, to proceed under the order (*r*).

Formal parts: see ante, No. 60.

on the part of A. B., and C. D., in the order dated the —— day of ——, 187—, named, to proceed with the account thereby directed to be taken.

1211.

Advertisement, for claimants to send particulars of their claims (*s*).

Pursuant to an order of the High Court of Chancery, made in the matter of the estate of John Thomas, late of No. 200, Russell Square, in the county of Middlesex, esquire [*or as may be*], deceased, the creditors and other persons claiming debts or liabilities affecting the personal estate of the said (John Thomas): who died (*Continue as in* No. 1235, *post, to the end*).

1212.

Notice of particulars of a claim (*t*).

The same as No. 1236, *post*.

(*r*) See Dan. Pr. 1078; Ord. XXXV. 15, 16. As to the proceedings under the order, at chambers, see Dan. Pr. 1078.

(*s*) See Dan. Pr. 1078; Ord. 27 May, 1865, rr. 1, 16. The form of advertisement here given is adapted from Form No. 1, in Sched. 2, to Ord. 27 May, 1865: which may be used with such variations as the circumstances of the case may require: *ib.* r. 1. As to the advertisement having the force and effect of a notice given under 22 & 23 Vic. c. 35, s. 29 (*post*, No. 1219), see 23 & 24 Vic. c. 38, s. 14; Dan. Pr. 1081. As to fixing a time for adjudicating on the claims, see Dan. Pr. 1078; and as to the procedure in examining, proving, and adjudicating on the claims, see *ib.*; and *post*, No. 1235, *et seq.*, and notes thereto. As to the Chief Clerk's certificate of the result of the account, and as to applications to take the Judge's opinion on, or to discharge or vary, the certificate, see Dan. Pr. 1078, 1079; 13 & 14 Vic. c. 35, ss. 20, 21; 23 & 24 Vic. c. 38, s. 14; and *post*, sec. 6. If the proceeding is taken on the higher scale, a fee of £1 is payable, in a fee fund stamp, on the advertisement. If otherwise, no fee is payable thereon: Regul. to Ord. Sched. 4; *post*, Chap. XXXI.

(*t*) See Dan. Pr. 1078.

1213.
Notice of motion, or summons, to restrain proceedings at law by a creditor, pending the taking of the account (*u*).

Formal parts: see ante, No. 55, *or* 60.
on the part of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above named (John Thomas), that, until the account of debts and liabilities affecting the personal estate of the said (John Thomas) directed to be taken by the order made in this matter, dated the —— day of ——, 187—, has been taken thereunder, G. H., of (*residence and addition*) : who has, or claims to have, a demand upon the estate of the said (John Thomas), by reason of a debt or liability due from such estate : may be restrained from proceeding with the action commenced by him in Her Majesty's Court of Queen's Bench at Westminster [*or as may be*], against the said A. B., and C. D., to enforce his said demand ; and from commencing or prosecuting any other action against the said A. B., and C. D., for or in respect of the said demand.

1214.
Notice of motion, to restrain a creditor from proceeding at law, where the account has been taken and certified (*x*).

Formal parts : see ante, No. 55.
on the part of A. B., and C. D., the executors of the will [*Or*, the administrators of the personal estate] of the above named (John Thomas), that G. H., of (*residence and addition*),

If so, add: who, by the Chief Clerk's certificate, dated the —— day of ——, 187—, and made in this matter pursuant to the order therein dated the —— day of ——, 187—, is certified to have a demand upon the estate of the said (John Thomas), to the amount of £——, *or as may be, as in the certificate :*

may be restrained, by the order and injunction of this honourable Court, from proceeding with the action (*Continue as in* No. 1213, *ante, to the end, and add*), until the further order of this Court.

1215.
Notice of motion, for payment of certified debts (*y*).

Formal parts : see ante, No. 55.
on the part of E. F., in the Chief Clerk's certificate made in this matter, and dated the —— day of ——, 187—, named, that A. B., and C. D., the executors of the will

Or, administrators of the personal estate

of the above named (John Thomas), may be ordered to apply the personal estate of the said (John Thomas) in payment and satisfaction of such of his debts by the said Chief Clerk's certificate certified to be due to the said E. F., and the other persons therein named, as remain unpaid, in a due course of administra-

(*u*) See Dan. Pr. 1080 ; 23 & 24 Vic. c. 38, s. 14 ; but see *ante*, No. 1208, n. (*n*). As to restraining proceedings at law by creditors, in other cases, see Dan. Pr. Chap. XXXVI ; and see *post*, Chap. XXXVI.

(*x*) See Dan. Pr. 1082 ; 13 & 14 Vic. c. 35, s. 24.

(*y*) See Dan. Pr. 1080 ; 13 & 14 Vic. c. 35, s. 22.

tion. Or, that the usual accounts may be directed to be taken of the personal estate of the said (John Thomas): with all usual and proper directions. And that provision may be made for payment by the said A. B., and C. D., or out of the assets of the said (John Thomas), of the costs of the said E. F. of this application.

1216.

Petition, for payment of certified debts (*z*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of E. F., of (*residence and addition*).

Showeth as follows:

1. By an order dated the —— day of ——, 187—, made in this matter by your lordship [*Or*, by his honour the Vice-Chancellor ——], on the application of A. B., and C. D., the executors of the will of the above named John Thomas [*or as may be*], it was ordered that (*Recite the order directing an account of debts and liabilities to be taken*).

2. The Chief Clerk of your lordship [*Or*, of the said Vice-Chancellor] has made his certificate dated the —— day of ——, 187—, in pursuance of the said order; and has thereby certified that (*Recite the material parts of the certificate*).

3. The said certificate was approved by your lordship [*Or*, the said Vice-Chancellor] on the —— day of ——, 187—; and was filed on the —— day of ——, 187—.

4. The schedule of debts to the said Chief Clerk's certificate includes a debt of £— due to your petitioner from the estate of the said (John Thomas): which debt remains unpaid; and your petitioner believes that many other of the debts, and of the liabilities certain, comprised in the said schedule, also remain unpaid and unprovided for.

Your petitioner therefore humbly prays, that the said A. B., and C. D., may be ordered to apply the personal estate (*&c.: Continue as in* No. 1215, *ante, to the end: substituting* "your petitioner," *for* "the said E. F.").

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1217.

Notice of motion, to deposit a fund to answer a contingent liability (*a*).

Formal parts: see ante, No. 55.

on the part of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above named (John Thomas):

1. That they may be at liberty to pay into the bank, with the privity of the Accountant-General, to the credit of "Re John Thomas's Estate (1871, T. No. 50)," to an account to be intituled

(*z*) See Dan. Pr. 1080; 13 & 14 Vic. c. 35, s. 22.

(*a*) See Dan. Pr. 1080; 13 & 14 Vic. c. 35, s. 23.

"Fund to answer the testator's contingent liability to E. F.", the sum of £— ; and that the same may be laid out in bank £3 per cent. annuities, and the interest thereon accumulated.

2. That the said fund may be deemed to be a fund set apart and appropriated out of the estate of the said (John Thomas) to answer the contingent liability to E. F., by the Chief Clerk's certificate dated the —— day of ——, 187—, allowed in respect of the covenant entered into by the said (John Thomas) with him, as therein mentioned [*or as the facts may be*].

3. That any person interested in the said fund may be at liberty to apply, as he may be advised.

1218.

Petition, for the like (*b*).

Title—and address to the L. C., or M. R. : see ante, No. 56.

The humble petition of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above named (John Thomas).

Showeth as follows :—

1. 2. 3. By an order (*Continue as in par.* 1, *of* No. 1216, *ante, to the end of par.* 3).

4. The schedule to the said Chief Clerk's certificate includes a contingent liability which the estate of the said (John Thomas) is under, by reason of a covenant entered into by him with E. F. to indemnify the said E. F. against any claim or demand by G. K., as therein mentioned [*or as the facts may be*].

5. Your petitioners are desirous that the sum of £— should be set apart and appropriated out of the assets of the said (John Thomas), to answer the said contingent liability ; and be paid into the bank as hereinafter mentioned.

Your petitioners therefore humbly pray, that they may be at liberty (*Continue as in par.* 1, *of* No. 1217, *ante, to* "contingent liability," *in par.* 2 ; *and conclude thus :*) hereinbefore mentioned ; and that any person interested in the said fund may be at liberty to apply, as he may be advised

Or that your lordship (*Conclude as in* No. 57, *ante, and add foot note*, No. 58).

1219.

Notice to creditors, under 22 & 23 Vic. c. 35, s. 29 (*c*).

John Thomas [*or as may be*], deceased.

Statutory Notice to Creditors.

Pursuant to the twenty-ninth section of the Act of Parliament of the 22nd & 23rd Victoria, chapter 35, intituled "An Act to

(*b*) See Dan. Pr. 1080 ; 13 & 14 Vic. c. 35, s. 23.

(*c*) See 22 & 23 Vic. c. 35, s. 29 ; Dan. Pr. 1081. The statutory notice is, by section 29, to operate as an indemnity, "where an executor or administrator shall have given such or the like notices as, in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given

further amend the law of property, and to relieve trustees," notice is hereby given, that all creditors and other persons having any claims or demands upon or against the estate of John Thomas [*or as may be*], late of (*add residence and addition*): who died at ——, in the (county) of ——, on the —— day of ——, 187—, and whose will was duly proved by [*Or*, and letters of administration of whose personal estate were duly granted to] C. D., of (*residence and addition*), in [*Or*, by] Her Majesty's Court of Probate, Principal Registry [*Or*, District Registry at ——], on the —— day of ——, 187—: are hereby required to send, in writing, the particulars of their claims or demands to the said C. D., at his residence aforesaid,

Or, to the undersigned E. F., the solicitor of the said C. D., at the office of the said E. F., situate at (*State where*), in the (county) of ——,

on or before the —— day of ——, 187—. And notice is hereby also given that, at the expiration of the last mentioned day, the said C. D. will proceed to distribute the assets of the said John Thomas [*or as may be*], amongst the parties entitled thereto, having regard to the claims of which the said C. D. has then had notice; and that the said C. D. will not be liable for the assets, or any part thereof, so distributed, to any person of whose claim the said C. D. has not had notice at the time of the distribution. Dated this —— day of ——, 187—.

C. D.

[*Or*, E. F., solicitor of the said C. D.]

Section III.—Proceedings under Decrees and Orders (*d*).

1. *Conduct of Suit or Proceedings* (*e*).

1220. Summons by a creditor, for conduct of suit of another creditor (*f*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*): who has been allowed by the Chief Clerk as a creditor upon the estate of C. D., the testator [*Or*, intestate] in the decree [*Or*, order] dated the

by the Court of Chancery, in an administration suit." Beyond directing one insertion in the London Gazette, there appears to be no uniform rule of practice at the Chambers of the Equity Judges as to giving notices to creditors in an administration suit. The usual course is to direct the notices to be inserted in certain newspapers, and to be repeated a certain number of times; but in how many and what newspapers, and how many times, depends, in the particular case, on the magnitude of the property in question, the position in life of the deceased, and the places where he resided, or carried on business.

(*d*) See Dan. Pr. 1082—1188.

(*e*) *Ibid.* 1082—1084.

(*f*) *Ibid.* 1083. For order in like case, see Seton, 138, No. 7.

—— day of ——, 187—, named [*Or*, who claims to be a creditor upon the estate, *&c.*] : that the future conduct of this suit may be committed to the applicant.

1221. Notice of motion, or summons, for the conduct of a creditors' suit, stayed as to the plaintiff only (*g*).

Formal parts: see ante, No. 55, *or* 60.
on the part of A. B. (*Continue as in* No. 1220, *ante, to* suit ; *and conclude thus*) : proceedings in which on the part of the plaintiff therein were stayed by an order dated the —— day of ——, 187— : may be committed to the said A. B.

1222. Summons by a legatee, for conduct of suit of another legatee (*h*).

Formal parts: see ante, No. 60.
on the part of A. B., of (*residence and addition*) : who claims to be interested in the matters in question in this suit as a residuary legatee [*or as may be*] under the will of C. D., the testator in the decree [*Or*, order] dated the —— day of ——, 187—, named : that the future conduct of this suit may be committed to him.

1223. Summons for conduct of suit to be given to a defendant, or a person having liberty to attend (*i*).

Formal parts: see ante, No. 60.
on the part of the defendant (*k*),
Or, of A. B.: who, by an order dated the —— day of ——, 187—, has liberty to attend the proceedings under the decree [*Or*, order] dated the —— day of ——, 187—, in this cause (*l*),
that the future conduct of this cause may be committed to him.

1224. Summons, by active plaintiffs, for conduct of cause, where co-plaintiff refuses to proceed (*m*).

Formal parts: see ante, No. 60.
on the part of A. B. and C. D., two of the above named plaintiffs, that the applicants may have the sole conduct of this cause.

(*g*) See Dan. Pr. 215, 695, 1083. For order in like case, see *Re Wesson, Salter* v. *Tildesley*, M. R. at Chambers, 16 Feb. 1866, Reg. Lib. B. 220.

(*h*) See Dan. Pr. 1083.

(*i*) For order in two infants' suits, giving the conduct of the decree in the second suit to the next friend in the first, on behalf of the infant plaintiff, see *Frost* v. *Ward*, L.JJ., 13 Jan. 1864, Reg. Lib. A. 36.

(*k*) For order in like case, see *Dodd* v. *Bates*, V. C. S. at Chambers, 23 July, 1866, Reg. Lib. A. 2022.

(*l*) For orders in like case, see *Belchier* v. *Belchier*, V. C. K. (on adjournment into Court), 24 June, 1865, Reg. Lib. A. 1257 ; *Tayler* v. *Tayler*, M. R. at Chambers, 12 Jan. 1869, Reg. Lib. B. 34.

(*m*) See Dan. Pr. 331, n. (*z*). For order in like case, see *Butlin* v. *Arnold*,

2. *Carrying in Decree or Order (n).*

1225.

Certificate, verifying copy of decree or order for chambers (*o*).

We [*Or*, I] certify, that the above is a true copy of the original [*Or*, of an office copy of the original] decree [*Or*, order], as passed and entered. Dated this —— day of ——, 187—.

(*Add name, &c., of solicitor or party leaving the copy: see ante*, No. 4, *or* 7.)

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3. *Summons to proceed (p).*

1226.

Summons to proceed under a decree or order (*p*).

Formal parts: see ante, No. 60.

on the part of the plaintiff,

Or, defendant A. B.,

Or, of the petitioner—*Or*, respondent—named in the order dated the —— day of ——, 187—,

Or, of A. B., who by an order dated the —— day of ——, 187—, has liberty to attend the proceedings,

Or, of A. B., to whom, by an order dated the —— day of ——, 187—, the future conduct of this suit has been committed—*or as may be*,

to proceed with the accounts and inquiries

Or, with the sale

Or, with the apportionment

Or, to settle the draft of the conveyance

Or, to settle the draft of the mortgage

Or, to settle the draft of the lease—*or as may be*,

directed by the decree [*Or*, order] dated the —— day of ——, 187—.

V. C. W. at Chambers, 4 April, 1864, Reg. Lib. A. 699; and see S. C., 1 H. & M. 715. The summons must be served on the co-plaintiff; but need not be served on the defendants: *ib.*

(*n*) See Dan. Pr. 1084.

(*o*) *Ibid.*; Ord. XXXV. 15. As to the time allowed for bringing a decree or order into chambers, see Ord. XXXV. 22. As to office copies, see Dan. Pr. 879.

(*p*) See Dan. Pr. 1085; Ord. XXXV. 16.

1227.
Note of the names of the solicitors concerned, to be left at chambers (*q*).

In Chancery.

(*Short title, and reference to the record.*)

The names of the solicitors concerned, and for whom, in this cause [*Or*, matter] are as follows :—

Names of Solicitors.	For whom concerned.
Messrs. A. & B.	Plaintiff [*Or*, Petitioner].
Mr. C. D.	Defendant [*Or*, Respondent] E. F.
Mr. G. H.	Defendant [*Or*, Respondent] L. M.
Mr. N. O.	P. Q., having liberty to attend the proceedings.

NOTE.—The defendant R. S. appears in person.
The defendant T. U. has not appeared.
(*Name, &c., of solicitor or party leaving the note : see ante*, No. 4 *or* 7.)

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4. *Directions as to prosecution* (*r*).

1228.
Certificate, verifying copy, for chambers, of certificate of entry of memorandum of service (*s*).

In Chancery.

(*Short title, and reference to the record.*)

We [*Or*, I] certify, that this is a true copy of the original certificate signed by the Clerk of Records and Writs. Dated this —— day of ——,187—.

(*Name, &c., of solicitor or party leaving the copy : see ante*, No. 4, *or* 7.)

(*q*) See Dan. Pr. 1085 ; Regul. 8 Aug. 1857, r. 5. A print of the bill (and usually of each answer also), in a suit instituted by bill, is also required to be left : see Dan. Pr. 1085 ; *ib.* n. (*t*) ; Regul. 8 Aug. 1857, r. 6.

(*r*) See Dan. Pr. 1085 ; Ord. XXXV. 16. For the practice as to service and dispensing with service of notice of the decree, see Dan. Pr. 358, *et seq.* ; and for the forms incident thereto, see *ante*, No. 252, *et seq.* For form of certificate verifying copy, for chambers, of order for leave to attend proceedings, see *ante*, No. 1225.

(*s*) See Dan. Pr. 1086 ; Regul. 8 Aug. 1857, r. 8. For form of certificate of entry of the memorandum, see *ante*, No. 270.

5. *Parties entitled to attend* (*t*).

1229.

Summons by a creditor, or other person interested, for leave to attend the proceedings (*u*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*): whose claim to be a creditor upon the estate of C. D., the testator [*Or*, intestate], in the decree [*Or*, order] dated the —— day of ——, 187—, named, has been allowed by the Chief Clerk;

Or, who claims to be interested in the matters in question in this suit, as an annuitant under the will of C. D., the testator in the decree, *&c.*, named:

Or, the assignee of the interest of the defendant E. F. in the residuary estate of C. D., the testator in the decree, *&c.*, named—*or as may be:*

that the applicant may be at liberty to attend the proceedings under the (said) decree [*Or*, order] dated, *&c.*

Or, under the account numbered 5—*Or*, inquiry numbered 6—directed by the decree, *&c.*

And that the plaintiff [*or other person having the carriage of the proceedings*] may be directed to give notice, from time to time, to the applicant [*Or*, to Mr. G. H., of, *&c.*, the applicant's solicitor] of all proceedings to be had and taken under the said decree [*Or*, order],

Or, under the said account [*Or*, inquiry],

and otherwise in and about this suit [*or as may be*], until further order.

1230.

Order for leave for creditors to attend the proceedings in a suit, on special terms (*x*).

Formal parts: see ante, No. 1194.

It is ordered that the applicants, the L. and C. B. Company: who have proved a debt against the estate of J. S., the intestate in the decree dated the —— day of ——, 186—, named: be at

(*t*) For the rules as to the parties entitled to attend the proceedings under a decree or order, see Dan. Pr. 1086, 1087. As to the power of the Judge to nominate one solicitor for a class, see *ib.* 1087; Ord. XXXV. 20; and to require parties to be represented by a distinct solicitor, see Dan. Pr. 1089; Ord. XXXV. 21.

(*u*) See Dan. Pr. 243, 1088. For forms of motion paper, and petition of course, that parties served with notice of a decree or an order may be at liberty to attend the proceedings thereunder, and affidavits in support, see *ante*, Nos. 271—276; and see the notes thereto. As to the right of parties attending to take or be furnished with copies of documents, and at whose expense, see Dan. Pr. 1088; Ord. XXXV. 26. As to the costs of attendances at chambers, and certificates of attendance fees, see Dan. Pr. 1089; Ord. XL. 28; Regul. to Ord. Sched. 2; *post*, Chap. XXXI.

(*x*) *Norris* v. *Sadleir*, M. R. at Chambers, 14 Jan. 1864, Reg. Lib. B. 191. For order, giving leave to mortgagees of a defendant's interest to attend proceedings, and directing notice of all proceedings to be given to them, or their solicitors, but reserving the question of costs of and occasioned by the application, see *Re Praugnall, Cleverly* v. *Cleverly*, M. R. at Chambers, 8 Mar. 1870. Reg. Lib. B. 634.

liberty, at their own expense, to attend all proceedings relating to the accounts directed to be taken by the said decree, and the settlement of the Chief Clerk's certificate thereunder; and that notice of all such proceedings be given to the said Company: they, by their solicitors, undertaking to pay the costs of such notice, in such manner as the Judge shall direct.

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6. *Additional Accounts or Inquiries* (*y*).

1231. Summons, for additional accounts or inquiries (*z*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], that in addition to the accounts (and inquiries) directed by the decree [*Or*, order] dated the —— day of ——, 187—, the following accounts (and inquiries) may be directed to be taken (and made); that is to say: (*Set them out in numbered paragraphs* (*a*); *as in the following examples:*

11. An account of the rents and profits of the testator's real estate received by the defendant C. D., or by any person or persons by his order, or for his use.

12. An inquiry whether the children of the testator, or any of them, have created any and what incumbrances upon their respective shares of the testator's real and personal estate).

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7. 8. *Particular Proceedings.—Inquiries.—Claims* (*b*).

1232. Advertisement for claimants (other than creditors of a deceased person,) to come in and prove their claims (*c*).

Pursuant to a decree [*Or*, an order] of the High Court of Chancery, made in (*Set out the short title of the matter or cause, and the reference to the record, if any; as thus:*

the matter of the trusts of an indenture dated the 4th January, 1860, between A. B. and C. D.,

Or, a cause Jones against Styles (1870, J. No. 5,),

(*State the special object of the advertisement; as thus:*

the persons claiming to be the heir at law of A. B., late of

(*y*) As to when additional accounts or inquiries may be directed, see Dan. Pr. 1089, 1090; Ord. XXXV. 19; and see 15 & 16 Vic. c. 86, s. 42, r. 8; Ord. XXXIII. 18; and Dan. Pr. 363, as to adding to a decree, on the application of a party served with notice of it.

(*z*) See Dan. Pr. 1090. For orders in like case, see *Biggs* v. *Walford*, M. R. at Chambers, 25 Jan. 1864, Reg. Lib. A. 98; *Sharp* v. *Wright*, M. R. at Chambers, 23 Jan. 1867, Reg. Lib. B. 151; Seton, 160, No. 3; 233, No. 5.

(*a*) The additional accounts and inquiries should be numbered consecutively, in continuation of the numbers in the original decree or order: Dan. Pr. 1090; and see *ib.* 1084; Regul. 8 Aug. 1857, r. 4.

(*b*) As to the purposes for which proceedings are taken at chambers, see Dan. Pr. 1090, 1091. As to claims for debts or liabilities, under 13 & 14 Vic. c. 35, see *ante*, No. 1207, *et seq.*; and as to claims in other cases, see generally, Dan. Pr. 1091, *et seq.*; Ord. XXXV.; Ord. 27 May, 1865. For form of a concise statement, see *ante*, No. 1152.

(*c*) See Dan. Pr. 1092. The form here set out is adapted from that given by Cons. Ord. Sched. L.: which may be used with such variations as the

(*residence and addition*), living at the time of the said A. B.'s death on the —— day of ——, 187—,

Or, the persons claiming to be the heir according to the custom of the manor of Talleshunt, in the county of Sussex, of A. B., late of (*&c.: as above*),

Or, the persons claiming to be next of kin, according to the statutes for the distribution of intestates' estates, of A.B., late of, *&c.*, living at the time of his death on the —— day of ——, 187—, or to be the legal personal representatives of such of the said next of kin as are now dead,

Or, the persons claiming to be interested under a certain indenture dated the —— day of ——, 187—, executed by A. B., then of, *&c.*, for the benefit of his creditors,

Or, the persons claiming to be entitled to the legacy of £1000 bequeathed by the will of the testator Isaac Brown, late of Bath, in the county of Somerset, gentleman, to the child or children of his nephew William Saunders,

Or, the charitable institutions and persons claiming to be entitled to the sum of £500, bank £3 per cent. annuities, standing in the name of the Accountant-General of the said Court, in trust in this matter [*Or*, cause], to an account entitled, "Legacy bequeathed to the Poor Widows' Society, near London,"

Or, the persons claiming to be entitled to any mortgage, charge, or other incumbrance upon or affecting the legacy of £1000 bequeathed to John Jones, now or late of (*residence and addition*), by the will of his father Ephraim Jones, late of (*residence and addition*), who died on or about the —— day of ——, 187— (*d*),)

are, by their solicitors, on or before the —— day of ——, 187—, to come in and prove their claims, at the Chambers of the Master of the Rolls, in the Rolls' Yard, Chancery Lane, Middlesex, [*or as may be: see ante*, No. 1197]: Or, in default thereof, they will be peremptorily excluded (*e*) from the benefit of the said decree [*Or*, order].

(Monday), the —— day of ——, 187—, at —— of the clock in the ——noon, at the said Chambers, is appointed for hearing and

circumstances of the case may require: Ord. XXXV. 37. For forms of advertisement for the creditors of a deceased person to come in, see *ante*, No. 1211; and *post*, No. 1235. As to when an advertisement for claimants will be issued, and as to the preparation, issuing, and publication thereof, see Dan. Pr. 1091, 1092; Ord. XXXV. 12, 35—37. As to the fee payable thereon, see *ante*, No. 1211, n. (*s*). As to the costs of persons establishing their claims under a decree, see Dan. Pr. 1108.

(*d*) For forms of affidavit by the beneficiary, and the executor or trustee, in answer to an inquiry as to incumbrances, see *post*, Nos. 1257, 1258.

(*e*) See Ord. XXXV. 12; but see Ord. XXXV. 41, and Dan. Pr. 1093, where the adjudication is adjourned. As to the effect of the clause of exclusion, see Dan. Pr. 1101, 1102.

adjudicating upon the claims (*f*).
Dated this ——day of ——, 187—.

R. M., Chief Clerk.

Let this advertisement be inserted in the next London Gazette (*g*).
R. M.

1233.
Notice of having entered a claim (*h*).

Formal parts: see ante, No. 54.
Take notice, that I have this day entered, in the "Claims Book" at the Chambers of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——], a claim, numbered —— (*i*), on behalf of C. D., of (*residence and addition*), to be (*State what; as thus*:
the heir at law of the testator A. B.
Or, one of the next of kin of the intestate A. B.).

1234.
Affidavit in answer to an inquiry as to heirship and kindred (*k*).

Formal parts: see ante, No. 9.
1. John Hughes, late of (*residence and addition*), the intestate in the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—, named was my son.

(*f*) As to an adjournment of the adjudication, see Ord. XXXV. 40; Dan. Pr. 1093.

(*g*) See Dan. Pr. 1092; Ord. XXXV. 36. The printers of other newspapers will insert the advertisement, on copies being left with them. The signature of the Chief Clerk to such copies is not required. The copies should include copies of the Chief Clerk's signature; and it is usual and desirable to add thereto the name and place of business, and address for service, if any, of the solicitor or party inserting the advertisement: see Dan. Pr. 1092, n. (*u*). For a form, see *ante*, No. 4, or 7.

(*h*) See Dan. Pr. 1092; Ord. XXXV. 38. The notice must be given to the solicitors in the cause, within the time specified in the advertisement for bringing in claims: *ib.*; but see, as to the entry of a claim, subsequent to an adjourned adjudication, Ord. XXXV. 41; Dan. Pr. 1093. For form of motion paper for leave to prosecute a claim *in formâ pauperis*, see *ante*, No. 95.

(*i*) The notice must state the number of the entry of the claim; Regul. 8 Aug. 1857, r. 9.

(*k*) As to the facts to be proved, modes of proof, and sources of proof, in successions to real and personal property, see Hubback, 114—469—711; Taylor on Evid. ss. 571—592, and pp. 1700—1; Best, s. 500; and as to documentary evidence generally, see Dan. Pr. 757—776; and *ante*, No. 733, *et seq.* Where a mother deposes to the exact dates of the births of her children, certificates of their births or baptisms are rarely necessary. For a table showing the devolution of undisposed of personal estate, under the statutes of distribution, see Haddan, App.; and see Williams' Exors, 403, *et seq.*

2. The said John Hughes died on the —— day of ——, 187—. He is the same person as "John Hughes," in the certificate marked A., now produced and shown to me, named; and purporting to be a copy of an entry of his burial in the register book of burials kept for the parish of W., in the county of Y., for the year 187—.

3. The said John Hughes was married twice only, namely: (1) On the —— day of ——, 18—, to Laura Thornton, at the parish church of S., in the city of T.; and (2) on the —— day of ——, 18—, to Jane Watts, at the parish church of P., in the county of R.

4. The said John Hughes and Laura Thornton are the same persons as "John Hughes," bachelor, and "Laura Thornton," spinster, respectively named in the certificate, marked B., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of S., for the year 18—.

5. The said Laura Thornton, then Laura the wife of the said John Hughes, died on the —— day of ——, 187—. She is the same person as "Laura Hughes," in the paper writing, marked C., now produced and shown to me, named; and purporting to be a copy, under the seal of the General Register Office, of the entry No. ——, in the certified copy of entries of deaths in the district of K., in the county of L., for the year 187—.

6. The said John Hughes and Jane Watts are the same persons as "John Hughes," widower, and "Jane Watts," widow, respectively named in the paper writing, marked D., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of P., for the year 187—.

7. The said John Hughes had two children only by his wife Laura Hughes, formerly the said Laura Thornton; namely: (1) Albert Hughes, who was born on the —— day of ——; and (2) Maria Hughes, who was born on the —— day of ——.

8. The said Albert Hughes is the same person as "Albert, son of John and Laura Hughes," in the paper writing, marked E., now produced and shown to me, named; and purporting to be a copy, under the seal (*&c.: as in par.* 5: substituting births, *for* deaths).

9. The said Maria Hughes is the same person as "Maria, daughter of John and Laura Hughes," in the paper writing, marked F., now produced and shown to me, named; and purporting to be a copy, under the seal (*&c.: as last above*).

10. The said Maria Hughes has been married once only; namely: on the —— day of ——, to Thomas Jones, of (*residence and addition*), at the parish church of N., in the city of O. They are the same persons as "Thomas Jones," bachelor, and "Maria Hughes," spinster, respectively named in the paper writing, marked G., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages for the said parish of N., for the year 187—.

11. The said John Hughes had no child by his wife Jane Hughes, formerly the said Jane Watts, and now his widow.

12. The said Jane Hughes and Albert Hughes, and the said Thomas Jones and Maria his wife, formerly the said Maria Hughes, are respectively now living.

13. *Show means of knowledge* (*l*).

1235. Advertisement for the creditors of a deceased person to come in, under Gen. Ord. 27 May, 1865 (*m*).

Pursuant to a decree [*Or*, an order] of the High Court of Chancery, made in (*Set out the short title of the matter or cause; as thus:*

the matter of the estate of A. B., and in a cause S. against P., (1870, B. No. 10)),

the creditors of A. B., late of (*residence, and addition; as thus:*

No. 6, West Terrace, Camberwell, in the county of Surrey, gentleman) :

who died in or about the month of ——, 187— : are, on or before the —— day of ——, 187— (*n*), to send, by post, pre-paid, to Mr. E. F., of (*Place of business*),

Or, to Messrs. F. & E, of, *&c.*,

Or, to Mr. E. F., of, *&c.*, a member of the firm of F. & G., of the same place,

the solicitor [*Or*, solicitors] of the defendant C. D., the executor [*Or*, administrator] of the deceased [*or as may be directed* (*o*)], their christian and surnames, addresses, and descriptions, the full particulars of their claims, a statement of their accounts, and the

(*l*) The deponent's means of knowledge of the facts deposed to should be clearly and fully stated. If he was present at any of the events narrated, that fact should be set forth at the end of the paragraph to which it refers; as thus: "I was present at the said marriage [*Or*, baptism—*Or*, death]."

(*m*) See Dan. Pr. 1094; Ord. 27 May, 1865, r. 1. The form here given is adapted from the form in Sched. 2, No. 1, to Ord. 27 May, 1865: which may be varied as the circumstances of the case may require: *ib.* r. 1. As to the proof, in an administration suit, of a debt becoming due between the testator's death, and the Chief Clerk's certificate, and as to the proof and provision for liabilities, see Dan. Pr. 1098, 1099. As to setting up the Statutes of Limitations as a bar, see *ib.* 1099. As to the course open to a creditor whose claim is disallowed, see *ib.* 1102. As to the computation and payment of interest on debts not carrying interest, see *ib.* 1103, 1105; Ord. XLII. 9, 10; and on specialties and debts carrying interest, Dan. Pr. 1103, 1104; and on debts accruing due after the decree, *ib.* 1105. As to the computation of interest with rests, see *ib.* 1107. As to the right of the creditor to the costs of establishing his debt, see *ib.* 1108; Ord. XL. 24. For the costs ordinarily allowed, see *post*, Chap. XXXI. As to contribution and refunding, see Dan. Pr. 1109.

(*n*) Usually a month from the issuing of the advertisement: Dan. Pr. 1094.

(*o*) The particulars are ordinarily directed to be sent to the solicitor of the executor, administrator, or other party by whom the claims are to be examined: Dan. Pr. 1094.

nature of the securities (if any) held by them; or, in default, thereof, they will be peremptorily excluded (*p*) from the benefit of the said decree [*Or*, order].

Every creditor holding any security is to produce the same before the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers situated in Rolls' Yard, Chancery Lane, Middlesex [*or as may be:* see *ante*, No. 1123], on ——, the —— day of ——, 187— (*q*), at —— of the clock in the ——noon: being the time appointed for adjudicating on the claims.

Dated (*&c.: Conclude as in* No. 1232, *ante* (*r*)).

1236.

Particulars of claim (*s*).

Sir:

(*Short title of matter or cause, as in the advertisement.*)

I, the undersigned (*Set out, in full, the christian and surnames, address, and description of the claimant* (*t*)*; as thus:*

Edward Williams, of Swanage, in the county of Dorset, Grocer, trading under the name or style of Thornton & Williams),

beg to inform you that I claim to be a creditor upon the estate of A. B., late of (*&c.: as in the advertisement*), for the sum of £—— (*Set out, or refer to an enclosure containing, the full particulars of the claim; as thus:*

being money lent by me to the said A. B. on the —— day of ——, 187—,

Or, for goods sold and delivered by me to the said A. B.: the full particulars whereof are comprised in the paper writing marked L., sent herewith),

and that the only security I hold for the debt so due to me, or any part thereof, is (*State the nature of the security, if any; as thus:*

an I. O. U. of the said A. B., for the said £——, dated ——, 187—,

Or, and that I do not hold any security whatsoever for the debt so due to me, or any part thereof).

(*Signature of creditor, and date.*)

To (*Name and address of the person to whom, by the advertisement, the notice is directed to be sent*).

(*p*) See Ord. XXXV. 12. As to the effect of this clause, see Dan. Pr. 1101, 1102.

(*q*) Usually three weeks after the expiration of the time for sending the particulars; but a prolonged time will be fixed, where necessary: Dan. Pr. 1094.

(*r*) As to the fee payable on the advertisement, see *ante*, No. 1211, n. (*s*); and as to the insertion in the Gazette, and in the public papers, see *ante*, No. 1232, n. (*g*).

(*s*) See Dan. Pr. 1094; and *ante*, No. 1235.

(*t*) In the case of a firm, set out the full christian and surnames of the persons constituting it, as well as the name or style in which they trade or carry on business.

1237.
Notice to creditor, to produce documents (*u*).

In Chancery.

(*Short title.*)

You are hereby required to produce, in support of the claim sent in by you against the estate of A. B., deceased (*Describe any probate, administration, deed, or document required to be produced; as thus:*

the probate of the will of C. D., granted to you,

Or, letters of administration of the personal estate of C. D., granted to you (*x*)),

before the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers, situate in the Rolls' Yard, [*&c.: see ante*, No. 1197], on——, the —— day of ——, 187—, at —— of the clock in the ——noon.

Dated this —— day of——, 187—.

G. R., of (*Place of business*),
Solicitor for the plaintiff [*Or* defendant —*or as may be*].

To (*Name of claimant*).

1238.
Affidavit of investigation of the claims sent in (*y*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, C. D., of (*residence and addition*), the above named plaintiff [*Or* defendant—*or as may be*], the executor [*Or*, administrator] of A. B., late of (*residence and addition: as in the advertisement*), deceased, and E. F., of (*Place of business*), solicitor [*or as may be* (*z*)], severally make oath and say, as follows:—

(*u*) See Dan. Pr. 1094; Ord. 27 May, 1865, rr. 2—4, and Sched. 2, No. 2. As to the mode of giving the notice, see Ord. 27 May, 1865, r. 13; Dan. Pr. 1095, n. (*m*). The creditor must, at the time appointed for adjudicating on the claims, produce the security (if any), held by him, without other notice than the advertisement: see *ante*, No. 1235.

(*x*) Where the creditor claims in a representative character, notice should be given to him to produce the probate, letters of administration, or other instrument under which he claims title: Dan. Pr. 1095; and see *ante*, No. 1191.

(*y*) See Dan. Pr. 1095; Ord. 27 May, 1865, r. 5, and Sched. 2, No. 3. The affidavit must be filed at least seven clear days prior to the time appointed for adjudication: Ord. 27 May, 1865, r. 5: unless the Judge directs the making of the affidavit to be postponed till after the day appointed for adjudication: *ib.* r. 6. An office copy of the affidavit, together with the exhibited list of claims, must be produced at the time of adjudicating on the claims: Dan. Pr. 1096.

(*z*) The affidavit is to be made by the executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor, or other competent person, or otherwise as the Judge shall direct: Ord. 27 May, 1865, r. 5; Dan. Pr. 1095.

I, the said E. F., for myself, say as follows :—

1. I have in the paper writing now produced and shown to me, and marked A. (*a*), set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the —— day of ——, 187—.

And I, the said C. D., for myself say, as follows :—

2. I have examined the particulars of the several claims mentioned in the paper writing now produced and shown to me and marked A. (*a*), and I have compared the same with the books, accounts, and documents of the said A. B. [*or as may be,—and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reasons*], I am of opinion, and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing marked A.; and to the best of my knowledge and belief such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants.

Or, 4. I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence.

Sworn (*&c.: see ante*, No. 13).

1239.

List of claims, to be exhibited to the affidavit of investigation (*b*).

A.

In Chancery.

(*Short title.*)

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [*Or*, defendant—*or as may be*], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the —— day of ——, 187—.

This paper writing, marked A., was produced and shown to C. D. (and E. F.), and is the same as is

(*a*) See *post*, No. 1239.

(*b*) See Dan. Pr. 1095; Ord. 27 May, 1865, r. 5, and Sched. 2, No. 4.

referred to in his [*Or*, their] affidavit, sworn before me this —— day of ——, 187—.

W. B. (*&c.: see ante*, No. 12).

First Part.—Claims proper to be allowed without further evidence.

Serial No. (*c*).	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.	Amount proper to be allowed.
				£ *s.* *d.*	£ *s.* *d.*

Second Part.—Claims which ought to be proved by the claimants.

Serial No. (*c*).	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.
				£ *s.* *d.*

1240.

Affidavit of non-receipt of any claim under the advertisement (*d*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for the above named plaintiff [*Or*, defendant C. D.—*or as may be*], the executor [*Or*, administrator] of A. B., late of (*residence and addition: as in the advertisement*), deceased, make oath and say, as follows:—

1. No claim, or particulars of any claim, has been sent in to me,

If so, add: or to my firm of F. & G., of ——, aforesaid—*as*

(*c*) The claims should be numbered in numerical order; and great care should be taken that those in the second part are numbered *in continuation* of the numbers of those in the first part.

(*d*) See Dan. Pr. 1096, n. (*q*). The affidavit must be made by the person, or by one of the firm of persons, to whom the particulars of claims are directed to be sent by the advertisement; and the description of the deponent should correspond with the description in the advertisement. An office copy of the affidavit should be produced at Chambers at the time appointed for adjudicating on the claims, or at an adjournment thereof: Dan. Pr. 1096, n. (*q*).

in the advertisement,
by any person or persons claiming to be a creditor or creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf in this cause [*Or*, matter], dated the —— day of ——, 187—, and which was published in the London Gazette of the —— day of ——, 187—.

Sworn (*&c.: see ante*, No. 12).

1241.
Notice to creditor, to prove his claim (*e*).

In Chancery.

(*Short title.*)

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me, on or before the —— day of ——, 187— (*f*); and to attend, by your solicitor, at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], situate in the Rolls' Yard [*&c.: see ante*, No. 1197], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon (*g*): being the time appointed for adjudicating on the claim. Dated (*&c.: Conclude as in* No. 1237, *ante*).

1242.
Notice to creditor, of allowance of claim (*h*).

In Chancery.

(*Short title.*)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of £——, with interest thereon, at £— per cent. per annum, from the —— day of ——, 187—, and £—— for costs.

If part only has been allowed, add: If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit (*Continue as in* No. 1241, *ante, to the end*).

1243.
Affidavit to prove a debt due on a judgment (*i*).

Formal parts: see ante, No. 9.

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly

(*e*) See Dan. Pr. 1096; Ord. 27 May, 1865, r. 8, and Sched. 2, No. 5. As to the mode of giving the notice, see Ord. 27 May, 1865, r. 13; Dan. Pr. 1095, n. (*m*).

(*f*) This time is not to be less than seven days after the notice: Ord. 27 May, 1865, r. 8.

(*g*) Insert the time to which the adjudication has been adjourned: *ib.*

(*h*) See Dan. Pr. 1096; Ord. 27 May, 1865, r. 8, and Sched. 2, No. 6. As to the mode of giving the notice, see *ib.* r. 13; Dan. Pr. 1095, n. (*m*).

(*i*) See Dan. Pr. 1096. As to the computation of interest on a judgment

and truly indebted to me in the sum of £—, for principal money, and for interest thereon at the rate of £4 per cent. per annum from the —— day of ——, 187—, upon and by virtue of a judgment recovered by me against the said A. B. in Her Majesty's Court of Queen's Bench at Westminster [*or as may be*], and duly signed on the —— day of ——, 187—, for the sums of £—— debt, and £—— costs.

2. The paper writing, marked A., now produced and shown to me (*k*), is the judgment paper, or *incipitur* of the proceedings, upon which the said judgment was signed (*l*). The said judgment now remains in full force and virtue.

3. A memorandum or minute of the said judgment was, on the —— day of ——, 187—, left with the Senior Master of the Court of Common Pleas at Westminster, and entered by him in accordance with the Statutes in this behalf.

If so: and a like memorandum or minute was, on the —— day of ——, 187—, left with the said Senior Master, and re-entered by him in accordance with the said Statutes (*m*).

If so: On the —— day of ——, 187—, a writ of *elegit* on the said judgment was issued and lodged with the Sheriff of H., to levy £——, and costs of execution, and interest on the said £——, at £4 per cent. per annum, from the —— day of ——, 187—; and such writ was on the same day lodged with the said Sheriff. The said Sheriff afterwards returned as follows: (*State return*). A memorandum or minute of such writ was on the —— day of ——, 187—, left with the said Senior Master, and the particulars thereof were entered by him in accordance with the Statute in that behalf (*n*).

4. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received any security or satisfaction whatsoever for the said sum of £——, and interest, or any part thereof respectively, save and except the said judgment [*or as may be*].

1244. Affidavit to prove a debt due on a mortgage, and covenant to pay (*o*).

Formal parts: see ante, No. 9.

1. By an indenture dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*k*), and made between

debt, see *ib.* 1104; and as to judgment debts generally, see Trower, 510, 511; Williams' Exors. 1981, 1982. For the practice as to recovering, entering up, registering, and enforcing judgments in the Superior Courts, see Chitty's Arch. 1868—1869; Chitty's Forms, 986—988; and see *ante*, No. 909, n. (*b*).

(*k*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*l*) See Common Law Procedure Act, 1852 (15 & 16 Vic. c. 76), s. 206.

(*m*) See *ante*, No. 909, and notes thereto.

(*n*) See *ante*, Nos. 910, 982, *et seq.*, and notes thereto.

(*o*) See Dan. Pr. 1096. As to debts on mortgage, see Trower, 512, 513; Williams' Exors. 1992.

A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, of the one part, and myself of the other part, the said A. B. granted and conveyed a farm called Blackacre, in the parish of A., in the county of B., with the appurtenances, unto and to the use of me, my heirs and assigns: subject to a proviso for redemption thereof, in case the said A. B., his heirs, executors, or administrators, should on the —— day of ——, 187—, pay to me, my executors, administrators, or assigns, the sum of £5000, with interest thereon in the meantime, at the rate of £5 per cent. per annum; and the said A. B., for himself, his heirs, executors, and administrators, thereby covenanted with me, to pay me the said sum of £5000, with interest as aforesaid, according to the said proviso.

2. On the —— day of ——, 187—, the said A. B. paid to me the sum of £1000 in part discharge of the said £5000.

3. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £4000, residue of the said £5000, with interest on the said £4000 at the rate aforesaid, from the —— day of ——, 187—, upon and by virtue of the said indenture.

4. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end: varying the statement, where necessary*).

1245.

Affidavit to prove a debt due on a common money bond (*q*).

Formal parts: see ante, No. 9.

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, made his bond dated the —— day of ——, 187—, to me in the penal sum of £——, conditioned for the payment by him, his executors and administrators, to me of the sum of £200, on the —— day of ——, 187—, together with interest thereon, in the mean time, at the rate of £5 per cent. per annum; and which said bond is now produced and shown to me, and is marked A. (*r*).

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £100, with interest thereon at the rate aforesaid from the —— day of ——, 187—, upon and by virtue of the said bond.

3. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end: varying the statement, where necessary*).

(*q*) See Dan. Pr. 1096. As to the computation of interest on a bond debt, see Dan. Pr. 1103. As to debts on bond, see Trower, 502, 503; Williams' Exors. 1931, 1932.

(*r*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

1246.
Affidavit to prove arrears due on bond to secure an annuity (*s*).

Proceed as in No. 1245, *ante, to* conditioned; *and continue thus:*
for the payment by him, his executors or administrators, of the sum of £20 a year to me, during the life of E. F.: who is still living [*or as may be*]; and which said bond is now produced and shown to me, and is marked A. (*t*).

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £40, for arrears of the said annuity computed to the —— day of ——, 187—, upon and by virtue of the said bond.

3. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end: varying the statement, where necessary*).

1247.
Affidavit to prove a debt due on a bill of exchange (*u*).

Formal parts: see ante, No. 9.

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £80, for principal money due on a bill of exchange dated the ——, 187—, drawn by me upon, and accepted by the said A. B., for the payment of £80 to me, —— months after the date thereof;

Or, due on a bill of exchange dated, *&c.*, drawn by one C. D. upon and accepted by the said A. B., for the payment of £80 to me, —— months after the date thereof;

Or, due to me as indorsee of a bill of exchange dated, *&c.*, drawn by C. D. upon and accepted by the said A. B. for the payment of £80 to the order of the said C. D., —— months after the date thereof, and by him indorsed to me—*or as may be* (*x*);

together with interest on the said principal sum, at the rate of £5 per cent. per annum, from the —— day of ——, 187—; and which said bill of exchange is now produced and shown to me, and is marked A. (*t*).

2. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end: varying the statement, where necessary*).

1248.
The like, on a promissory note (*y*).

Proceed as in No. 1247, *ante, to* principal money; *and continue thus:*
due on a promissory note dated the ——, 187—, for £90, made by the said A. B., whereby he promised to pay to me or my order the sum of £90, one month after the date thereof;

(*s*) See No. 1245, *ante*, n. (*q*).

(*t*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*u*) See Dan. Pr. 1096. As to a debt due on a bill of exchange, see Williams' Exors, 1931; and as to the interest allowed thereon in equity, see Dan. Pr. 1106.

(*x*) For other forms of statement, see Chitty's Forms, 397, 398.

(*y*) See Dan. Pr. 1096. As to a debt due on a promissory note, see Williams'

Or, due on a promissory note dated, *&c.*, for £90, made by the said A. B., and payable to me on demand ;
Or, due to me as indorsee of a promissory note dated, *&c.*, made by the said A. B., for the payment of £90 to the order of E. F., —— months after the date thereof, and by the said E. F. indorsed to me [*or as may be*] ;
together with interest (*Continue as in* No. 1247, *ante, to the end : substituting* promissory note, *for* bill of exchange).

1249.

Affidavit to prove a debt due on a check (*z*).

Proceed as in No. 1247, *ante, to* principal money ; *and continue thus :*
due to me as the payee of a banker's check, dated the ——, 187—, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of £30 to me or bearer, on demand ;
Or, due to me as the bearer of a banker's check, dated, *&c.*, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of £30 to E. F. or bearer, on demand, and by the said E. F. transferred and delivered to me ;
and which said check has been duly presented to, and refused payment by, the said Messrs. C. D. & Co. ; and is now produced and shown to me, and marked A. (*a*).
2. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end : varying the statement, where necessary*).

1250.

The like, on a simple contract (*b*).

Formal parts : see ante, No. 9.
1. A. B., the testator [*Or*, intestate] in the decree [*Or* order], dated the —— day of ——, 187—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £150 for (*State what ; as in the following examples* (*c*) :
for money lent by me to the said A. B., at his request.
for money paid by me for the use of the said A. B., at his request.
for money received by the said A. B. for my use.
for money found to be due from the said A. B. to me, on an account stated between us.
for goods sold and delivered by me to the said A. B.

Exors, 2006 ; and as to the interest allowed thereon in equity, see Dan. Pr. 1106.

(*z*) See Dan. Pr. 1096.

(*a*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*b*) See Dan. Pr. 1096. As to proof and payment of debts due on simple contract, see Williams' Exors, 1944—1946.

(*c*) For other forms of statement of the nature of the debt, see Chitty's Forms, 392, *et seq.*

for work done, and materials for the same provided, by me for the said A. B., at his request.
for salary due and payable from the said A. B. to me, for my services done for the said A. B. as his clerk, and on his retainer.
for work done by me as the agent of and for the said A.B., and on his retainer, and for commission and reward due and of right payable from him to me in respect thereof.
for work done as an attorney and solicitor, and materials for the same provided, by me for the said A. B., upon his retainer, and for fees due and payable to me in respect thereof, and for money paid by me for the use of the said A. B., at his request).

If so: and in the further sum of £5 for interest upon, and for the forbearance at interest to the said A. B. by me, at his request, for divers spaces of time, of monies due and owing to me from the said A. B.; and which interest the said A. B. contracted and agreed with me to pay me (*d*).

2. The full particulars of my aforesaid demand are set forth in the paper writing now produced and shown to me, and marked A. (*e*).

Where applicable, add: The prices charged in the said paper writing marked A. are fair and reasonable, and such as are usual and customary in the trade or business [*Or*, profession] of a timber merchant [*or as may be*]: as I know from having carried on such trade, *&c.*, for —— years last past.

3. And I, speaking positively (*Continue as in par.* 4 *of* No. 1243, *ante, to the end; varying the statement, where necessary*).

1251. Affidavit, by a personal representative, to prove a debt due to the estate (*f*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, C. D., of (*residence and addition*), the executor of the will [*Or*, administrator of the personal estate] of E. F., late of (*residence and addition*): who died on the —— day of ——, 187—: acting under probate of such will [*Or*, letters of administration of such estate] granted to me by Her Majesty's Court of Probate on the —— day of ——, 187—, make oath and say, as follows:

1. *State, in numbered paragraphs, the nature and existence of the debt: as in* Nos. 1243—1250, *ante; and conclude as follows:*

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that the said E. F. did not in his lifetime, and I have not, nor have nor hath any other person or persons by the order of the said E. F., or of

(*d*) As to the interest allowed in equity on stated accounts, see Dan. Pr. 1106.

(*e*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*f*) See Dan. Pr. 1096.

myself, or for his or my use, received any security or satisfaction whatsoever for the said sum of £—— [*or as may be*].

Sworn (*&c.: see ante*, No. 12).

1252.

Summons for leave to make a claim, where the time allowed has expired, but certificate not made (*g*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), that notwithstanding the time limited for making claims has expired, he may be at liberty, under the decree [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter], to make and establish his claim (*State in respect of what; as thus:*

as a creditor upon the estate of C. D., the testator [*Or*, intestate] in the said decree [*Or*, order] named, for the sum of £——).

1253.

Petition to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made (*h*).

Title—and address to the L. C., and M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

Show nature of the suit, and the proceedings had therein; as thus: 1. This suit was instituted for the administration of the estate of C. D.; and by the decree made therein by your lordship [*Or*, by his honour the Vice-Chancellor ——], dated the —— day of ——, 187—, the usual accounts and inquiries were directed to be taken and made, including an account of the debts of the said C. D.

2. The Chief Clerk of your lordship [*Or*, of the said Vice-Chancellor] made his certificate, dated the —— day of ——, 187—, in pursuance of the said decree; and thereby certified the result of the said account of debts, and of the other accounts and inquiries directed by the said decree.

3. The said Chief Clerk's certificate having become binding on the —— day of ——, 187—, this cause came on to be heard on further consideration before your lordship [*Or*, the said Vice-Chancellor], on the —— day of ——, 187—; and by an order then made of that date, the costs of this suit were directed to be taxed, and to be paid out of the sum of £1000 cash in the bank on the credit of this cause; and the residue of such cash was thereby directed to be apportioned amongst the creditors of the said C. D., in proportion to the respective amounts certified to be due to them by the said Chief Clerk's certificate.

4. Pursuant to the said order, the costs thereby directed to be taxed, have been carried into the office of the Taxing Master; but the taxation thereof is not yet completed; and no apportionment of the residue of the said fund has yet been made.

(*g*) See Dan. Pr. 1096; Ord. XXXV. 43; Ord. 27 May, 1865, r. 10.

(*h*) See Dan. Pr. 1097. As to service of the petition, see *ib.*

Show nature of petitioner's claim; and why omitted to be made before; as thus: 5. The said C. D. was, at the time of his death, and his estate still is, justly and truly indebted to your petitioner in the sum of £80, for goods sold and delivered by your petitioner to the said C. D., in the course of your petitioner's trade as a wine merchant. Your petitioner on the —— day of ——, 187—, for the first time became aware of the death of the said C. D., and that his estate was under administration by this honourable Court. By reason of your petitioner's ignorance of the existence of this suit, no claim by or on the part of your petitioner in respect of his said debt was made under the said decree; and your petitioner's said debt is not included in the said Chief Clerk's certificate.

6. Your petitioner is now desirous to establish his said debt against the assets of the said C. D. in this suit.

Your petitioner therefore humbly prays, that he may be allowed to rank as a simple contract creditor upon the estate of the said C. D. for the said sum of £80, and for interest thereon at the rate of £4 per cent. per annum from the date of the said decree; and that, notwithstanding the said order on further consideration, the residue which will remain of the said £1000, after payment of the said costs, may be directed to be apportioned amongst your petitioner in respect of his said debt and interest, and the several creditors of the said C. D. certified by the said Chief Clerk's certificate, in proportion to the respective amounts so due to your petitioner, and the said other creditors; and that the apportioned sums may be directed to be paid to your petitioner and the said other creditors accordingly.

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante,* No. 58).

1254. Summons to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made (*i*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*):

1. That he may be allowed to rank as a simple contract creditor upon the estate of C. D., the testator [*Or,* intestate] in the decree in this cause dated the —— day of ——, 187—, named, for the sum of £80, and for interest thereon at the rate of £4 per cent. per annum from the date of the said decree.

2. That, notwithstanding the order on further consideration dated the —— day of ——, 187—, the residue which will remain of the sum of £1000 therein mentioned, after payment of the costs

(*i*) See Dan. Pr. 1097.

thereby directed to be taxed, may be directed to be apportioned amongst the applicant, in respect of his said debt and interest, and the several other creditors of the said C. D. whose debts are certified by the Chief Clerk's certificate dated the —— day of ——, 187—, in proportion to the respective amounts due to the applicant, and the said other creditors.

3. That the apportioned sums may be directed to be paid to the applicant, and the said other creditors accordingly.

1255.

Summons for payment by claimant, of costs of his unsuccessful claim (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], that the costs occasioned to the applicant, and the other parties to this suit [*or as may be*], by reason of the claim made by E. F., of (*residence and addition*), to rank as a creditor upon the estate of the testator G. H. [*or as may be*], under the decree [*Or*, order] dated the —— day of ——, 187—, but which claim has been disallowed, may be ascertained at Chambers, or taxed by the Taxing Master; and that the said E. F. may be ordered to pay such costs to the applicant and the other parties entitled thereto [*or as may be*].

(*k*) See Dan. Pr. 1108. The order may be enforced by *subpœna*, and process of contempt: *ib.*; and *post*, Chap. XXXI.

1256.
List of debts allowed (*l*).

In Chancery.
(*Short title of cause or matter, and reference to the record.*)

List of debts allowed.

Serial No. of claim.	Names of creditors.	Addresses.	Amounts allowed for principal, interest, and costs.	Total amounts due.
			£ *s.* *d.*	£ *s.* *d.*
2	James Allen .	Boston, in the county of Lincoln, Surgeon	100 0 0	
		Interest . .	4 0 0	
		Costs . . .	2 2 0	
				106 2 0
1	Charles Cohen	98, Piccadilly, in the county of Middlesex, Gentleman, Executor of John Thomas . . .	67 0 0	
		Interest from 5th October, 1869, at £5 per cent. .	4 2 0	
		Costs . . .	2 2 0	
				73 4 0
5	John Dennis, and Owen Thomas .	16, Fleet Street, London, Grocers, and copartners . .	100 0 0	
		Interest from 16th October, 1869, at £5 per cent. .	5 0 0	
		Another debt . .	62 0 0	
		Interest . .	2 10 0	
		Costs . . .	2 4 6	
				171 14 6
			Total £	351 0 6

(*l*) See Dan. Pr. 1100; Ord. XXXV. 44; Regul. 8 Aug. 1857, Sched. No. 9. As to lists of claims of creditors under Ord. 27 May, 1865, see *ante*, No. 1239. The list must be written on foolscap paper, bookwise: Regul. 8 Aug. 1857, r. 17; and, in preparing it, the following directions must be attended to:—The names of the creditors are to be inserted in alphabetical order. When the debt does not carry interest, but interest is allowed under Ord. XLII. 9, it is to be stated as in the first example in the list. If the debt carries interest, the rate and time from which it is computed is to be stated, as in the second example. As in all cases the interest is computed to the date of the certificate, this need not be stated. Where there are both specialty and simple contract debts, separate lists are to be prepared: Regul. 8 Aug. 1857, Sched. No. 9, n.

9. *Inquiries as to Legacies and Annuities* (*m*).

1257. Affidavit by a beneficiary, as to incumbrances by him (*n*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, John Jones, of (*residence and addition; and identify the deponent with the cause or matter; as thus:* one of the defendants above named,

Or, in the plaintiff's bill in this cause named,

Or, one of the children of Ephraim Jones, the testator in the decree in this cause [*Or,* matter] dated the —— day of ——, 187—, named—*or as may be*),

make oath and say as follows:

1. I have not at any time mortgaged, charged, or otherwise incumbered the legacy of £1000 bequeathed to me by the will of the said testator Ephraim Jones, or any part thereof [*or as may be—according to the inquiry directed*], to, or in favour of, any person or persons whomsoever.

If so: save and except as hereinafter mentioned, that is to say: By an indenture dated the —— day of ——, 187—, and made between myself of the one part, and Charles Davies, of, *&c.*, of the other part, I assigned the said legacy, and the interest due, and to accrue due in respect thereof, unto the said Charles Davies, to secure to him the repayment of £100, with interest thereon at the rate of £5 per cent. per annum; and which sum, with interest thereon at the rate aforesaid from the —— day of ——, 187—, remains due to the said Charles Davies upon the security of the said indenture [*or as may be*].

Sworn (*&c.: see ante*, No. 12).

1258. Affidavit by an executor, or a trustee, as to notices received of incumbrances (*n*).

In Chancery.

(*Title of cause or matter, and reference to the record.*)

I, A. B., of (*residence and addition*), the above named defendant, and the executor of the will of Ephraim Jones, the testator in the decree [*Or,* order] in this cause [*Or,* matter] dated the —— day of ——, 187—, named [*or as may be*], make oath and say as follows:

1. I have not at any time received notice of any mortgage, charge, or incumbrance created by any person or persons interested under the will of the said Ephraim Jones, of the legacies, shares, or interests, thereby bequeathed to them respectively, or any part or parts thereof [*or as may be—according to the inquiry directed*].

If so: save and except the —— notices now produced and shown to me, and marked respectively A., B., *&c.* (*o*); and

(*m*) See Dan. Pr. 1109—1111. For form of advertisement for legatees and incumbrancers to come in under a decree or order, see *ante*, No. 1232. As to the computation of interest on legacies, see Ord. XLII. 11; Dan. Pr. 1110. As to the computation of arrears of annuities, see *ib.*; and see, generally, as to annuities and legacies, Williams' Exors, 1923, 1924, 1985, 1986.

(*n*) See Dan. Pr. 1110.

(*o*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

which notices were received by me on the respective days set forth in the first column of the schedule hereto; and the short particulars thereof are set forth in the second column of such schedule, opposite the respective days on which such notices respectively were so received.

The Schedule above referred to.

Date when notice received (*p*).	Short particulars.
1st January, 1868 . .	A notice, dated ——, 186—, from Messrs. A. & B., of an assignment by John Jones of his legacy of £1000 to Charles Davies, to secure £100 and interest.
8th August, 1869 . .	A notice, &c., &c.

Sworn (*&c.: see ante*, No. 12).

1259.
List of legacies remaining unpaid (*q*).

In Chancery.
(*Short title of cause or matter, and reference to the record.*)
List of Legacies remaining unpaid.

Serial No.	Names of legatees.	Descriptions.	Amounts of principal and interest.	Total amounts due.
			£ s. d.	£ s. d.
1	James Oliver	Son of testator, an infant . . .	100 0 0	
		Interest . .	7 5 6	
				107 5 6
2	Mary Russell	of 20, Cheapside, London, widow . .	50 0 0	
		Interest from 1st January, 1869, the death of testator . .	4 8 4	
				54 8 4
3	Jane, the wife of John Williams .	of Lincoln, Esq. . .	250 0 0	
		Paid in part .	50 0 0	
			200 0 0	
		Interest .	14 11 0	
				214 11 0
			Total £	376 4 10

(*p*) The dates in this column should be placed in chronological order.
(*q*) See Dan. Pr. 1110. For this Form, see Regul. 8 Aug. 1857, Sched. No.

1260.

List of annuities, and arrears due (*r*).

In Chancery.

(*Short title, and reference to the record.*)

List of Annuities, and arrears due.

Serial No.	Names of annuitants.	Description of annuitants, and nature of annuities.	Amounts of annuities.	Amounts of arrears due.
			£ *s.* *d.*	£ *s.* *d.*
1	Mary Jones .	Spinster, daughter of testator, during her life . . .	50 0 0	25 0 0
2	Maria Williams	Widow of testator, during her life and widowhood . . .	200 0 0	
		Arrears due from 7th of August, 1869, down to which the annuity has been paid. . . .	. . .	300 0 0
		Totals . £	250 0 0	325 0 0

10. The list must be written on foolscap paper, bookwise : *ib.* r. 17 ; and in preparing it the following directions should be observed :—Where the interest is to be computed from the end of one year after testator's death, it is to be stated as in the first example above ; if otherwise, the time from which it is payable is to be stated ; and as in all cases interest is computed to the date of the certificate, this need not be stated : *ib.* Sched. No. 10, n. As to legacies and legacy and succession duties, see Williams' Exors. 1985—1987, 2021, 2022 ; Roper on Legacies, *passim ;* Trevor on Taxes, 81—283—366 ; and for the Regulations of the Inland Revenue Office, forms and tables, see Trevor, 367—478. As to the apportionment of a deficient fund among legatees, see *post,* Nos. 1350—1352.

(*r*) See Dan. Pr. 1110. For this Form, see Regul. 8 Aug. 1857, Sched. No. 11. The list must be written on foolscap paper, bookwise : *ib.* r. 17 ; and, in preparing it, the arrears should be explained as in the second example, if due from any other period than that of testator's death : *ib.* Sched. No. 11, n. As to annuities, see Williams' Exors. 1923, 1924.

10. *Suits for Specific Performance* (*s*).

1261. Notice of motion, for an inquiry as to the title (*t*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that an inquiry may be directed whether a good title can be made to the hereditaments comprised in the agreement dated the —— day of ——, 187—, in the plaintiff's bill mentioned [*or as may be*]; and if a good title can be made, then a further inquiry when it was first shown (*u*) that a good title could be made.

1262. Statement of the points in dispute, for chambers (*v*).

In Chancery.

(*Short title, and reference to the record.*)

Statement of the points in dispute between the plaintiff and defendant, as to the title to the hereditaments comprised in the agreement dated ——, 187—, in the plaintiff's bill mentioned [*or as may be*], and by the order dated ——, 187—, directed to be inquired into.

A. Plaintiff's (*x*) requisitions, dated ——, 187—.	B. Defendant's (*x*) answers, dated ——, 187—.	C. Plaintiff's (*x*) replies, dated ——, 187—.
1.	1.	1.
2.	2.	2.
3.	3.	3.

1263. Memorandum of direction to the conveyancing counsel, to advise as to the title (*y*).

The Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers.

(*Short title of the cause or matter, and reference to the record.*)

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that the opinion of the conveyancing counsel in rotation

(*s*) As to suits for specific performance, and the practice relative thereto, see Dan. Pr. 1111—1117; Add. Cont. 1096—1103; Dart, 898—1049; 1 L. C. Eq. 714—734, 887, 888; 2 *ib.* 449—467, 481—503, 1062—1067; Seton, 593—626, 1407; Sugd. V. & P. 201—223; Woodfall, 932—964. For forms of decrees and orders in such suits, see Seton, 593—595, 607—612. As to the jurisdiction of the County Courts, under 30 & 31 Vic. c. 142, s. 9, see Dan. Pr. 1112, n. (*u*); *ib.* Chap. XLV., s. 29.

(*t*) See Dan. Pr. 1112; Ord. XX.; and Seton, 593, No. 1. For form of summons to proceed under the order, see *ante*, No. 1226.

(*u*) See Dan. Pr. 1115.

(*v*) *Ibid.* 1112. Statements of this description can ordinarily be copied most conveniently for use on brief paper briefwise.

(*x*) Or as the fact may be.

(*y*) See Dan. Pr. 1113. As to when the Court may require the assistance of one of the conveyancing counsel, and as to the mode of objecting to his opinion, see *ib.* 1046; 15 & 16 Vic. c. 80, s. 40. For the manner in which the

[*or as may be* (*z*)] be procured as to (*State the matter referred; as thus:*

whether a good title is deduced by the accompanying abstract, identified by my initials thereon, to the hereditaments in the order dated the —— day of ——, 187—, mentioned.

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1264.

Note thereon of name of the conveyancing counsel in rotation (*a*).

Mr. H. is the conveyancing counsel in rotation.

(*Signature of the Registrars' clerk* (*b*).)

1265.

Chief Clerk's certificate of the result of an inquiry as to the title (*c*).

Formal parts: see post, No. 1511.

1. *Where a good title is shown:—*

A good title can be made to the hereditaments comprised in the agreement dated the —— day of ——, 187—, in the plaintiff's bill mentioned (*If subject to any act being done, or other qualification, state same*).

It was first shown on the —— day of ——, 187—, that such good title could be made [*or as may be, according to the form of the inquiry directed*].

The evidence produced, *&c.*

2. *Where a good title is not shown:—*

A good title cannot be made (*&c.: as above, to* mentioned; *and state the points on which the title is defective*).

The evidence produced, *&c.*

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business is distributed among such counsel, and as to their fees, see *ib.* ss. 40, 41, 43; Dan. Pr. 1046, 1047; Ord. II.; and as to the costs of settling drafts by private counsel in addition, see Ord. XL. 30. The names of the present conveyancing counsel, in the order of their seniority, are:—Mr. W. Hayes (No. 4, New Square); Mr. T. Lewin (No. 8, Old Square); Mr. C. Hall (No. 4, Stone Buildings); Mr. J. H. Dart (No. 4, New Square); Mr. M. J. F. Brickdale (No. 8, New Square); and Mr. H. R. Vaughan Johnson (No. 1, Stone Buildings): see Dan. Pr. 1047, n. (*i*).

(*z*) Where the reference is made to any one in particular of the conveyancing counsel, under Ord. II. 5 (Dan. Pr. 1047), say: "the opinion of Mr. A., the conveyancing counsel in this cause [*Or*, matter]"—Or, "the opinion of Mr. A., one of the conveyancing counsel."

(*a*) See Dan. Pr. 1047; Ord. II. 3. Where the reference is made to any one of the counsel by name, this note is of course not required.

(*b*) The present first clerk to the Registrars is Mr. Plumer; the second is Mr. Ward: by one of whom this note is ordinarily given: see Ord. II. 1; Dan. Pr. 1047.

(*c*) See Dan. Pr. 1113. As to the form of the certificate, see *ib.*; and for the grounds on which the certificate will be reviewed, *ib.* 1113, 1114.

1266.
Further certificate, of amount due to vendor, and of settlement of draft conveyance (*d*).

Formal parts : see post, No. 1511.

Interest at the rate of £— per cent. per annum, from the —— day of ——, to the date of this certificate on the sum of £3,000, the purchase money for the hereditaments comprised in the agreement dated, *&c.*, in the plaintiff's bill mentioned, amounts to the sum of £280.

The plaintiff has received rents and profits of the said hereditaments since the —— day of ——, to the amount of £300 ; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of £50 : leaving a balance due from him of £250 on that account.

The particulars of the above receipts and payments appear in the account marked A., verified by the affidavit of the plaintiff, filed ——, 187—, and which account is to be filed with this certificate.

The plaintiff's costs of this suit have been taxed by the Taxing Master at the sum of £200 (*e*).

The said sums of £3,000, £280, and £200 make together £3,480 : wherefrom being deducted the said sum of £250, there remains due to the plaintiff the sum of £3,230.

A proper conveyance of the said hereditaments from the plaintiff to the defendant has been settled (*f*): consisting of an indenture intended to be made between the plaintiff of the one part, and the defendant of the other part ; and the engrossment whereof is identified by my signature in the margin thereof.

The evidence produced, *&c.*

1267.
Notice of motion, or summons, to fix a time for payment of amount due to the vendor (*g*).

Formal parts : see ante, No. 57, *or* 60.

on the part of the plaintiff :

1. That the defendant A. B. may be ordered, on the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, to pay to the plaintiff, C. D., at the chapel of the

(*d*) See Dan. Pr. 1115. For the form of a decree for specific performance, to which the above certificate would be applicable, see Seton, 607. As to the further hearing of the cause, after a certificate on the title, see Dan. Pr. 1115. As to interest, income tax, rents, fines, rests, and deterioration, see Seton, 612—615; Sugd. V. & P. 849, 870 ; and as to compensation or abatement, see Seton, 618—620 ; Sugd. V. & P. 828. As to the conveyance, payment, delivery of deeds, and costs, see Seton, 615—618 ; Sugd. V. & P. 831, 833, 837.

(*e*) As to including the costs in the account, see Dan. Pr. 1115.

(*f*) As to the settlement of the conveyance, see *ib.*

(*g*) See Dan. Pr. 1116. As to when this further order will be necessary, see *ib.* As to the form of the order, in a suit by the purchaser against the vendor, see *ib.* 1117. For the mode of enforcing the order, see *ib.* 903, *et seq.* As to rescinding the contract, and staying further proceedings, after default by the purchaser, see *ib.* 1116.

Rolls, in the Rolls' Yard, Chancery Lane, London [*or as may be*], the sum of £3,230, by the Chief Clerk's certificate dated the —— day of ——, 187—, certified to be due to the plaintiff for principal, interest, and costs as therein mentioned, together with interest at the rate of £— per cent per annum on £3,000, part thereof, from the last mentioned day to the day of payment; and also the plaintiff's costs of, and occasioned by, this application: such costs to be taxed by the Taxing Master, in case the parties differ.

2. That upon such payment being made, the plaintiff may execute and deliver to the defendant the indenture of conveyance from the plaintiff to the defendant in the said Chief Clerk's certificate mentioned; and deliver to the defendant, upon oath, all deeds and writings in his custody or power relating to the hereditaments in the said Chief Clerk's certificate also mentioned [*or as may be*].

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11. *Investments in the Purchase, or on Mortgage, of an Estate* (*h*).

1268. Petition for the investment of a fund in Court, in a purchase, or on mortgage (*i*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

Show that the fund in Court is available for investment; as, thus:

1. A. B., the testator in the pleadings of this cause named, by his will, dated the —— day of ——, 187—, bequeathed to the defendants C. D. and E. F., the residue of his personal estate

(*h*) See Dan. Pr. 1117—1120. As to investments by the Court, and by trustees under or without its sanction, see 2 L. C. Eq. 805—814, 1073, 1074; Lewin, 250—274; Seton, 64, 65, 490—492, 527, 775—778; 2 Spence, Eq. Jur. 925—927; 4 & 5 Will. IV. c. 29; 22 & 23 Vic. c. 35, s. 32; 23 & 24 Vic. c. 38, ss. 10—12, and Ord. 1 Feb. 1861; 23 & 24 Vic. c. 145, s. 25; Sugd. Stat. 323, 324; 28 & 29 Vic. c. 78, s. 40; 30 & 31 Vic. c. 132; 32 & 33 Vic. c. 106, s. 16; 33 & 34 Vic. c. 34; and for forms of orders in such cases, see Seton, 490, 491, 525, 776. As to investments under the Lands Clauses and other special acts, see Dan. Pr. Chap. XLV.; and see *post*, Chap. XLV. As to agreements relating to land, see Sugd. V. & P. xii. xix., 820; Add. Cont. 69—111; 1 Prideaux's Conv. 55—70; and for the stamp duties thereon, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sched. As to contracts by agents, see Add. Cont. 605—608; Sugd. V. & P. 820; and for forms of agreements for the sale and purchase of land, see 2 Davidson's Conv. 3—14, 29, 63; 1 Prideaux's Conv. 71—92; and for a loan of money on mortgage, *ib.* 96.

(*i*) See Dan. Pr. 1118. The petition must be supported by the affidavits of surveyors or other qualified persons, stating the size, value, rental, and outgoings of the estate, and any circumstances rendering the proposed purchase or security desirable. The contract must also be produced at the time of making the application. For form of affidavit, see *post*, No. 1270.

upon trust to convert the same into money, and to invest such money in their names in the purchase of freehold hereditaments, or on real securities, in England or Wales; and to permit your petitioner to receive the rents and profits or other income of such investment, during his life; with remainders over.

2. The testator died on the —— day of ——, 187—, without having revoked or altered his said will; and probate of such will was on the —— day of ——, 187—, granted by Her Majesty's Court of Probate to the defendants C. D. and E. F., the executors therein named.

3. This suit was instituted for the administration of the estate of the said A. B.; and by the decree made therein by your lordship [*or as may be*], dated the —— day of ——, 187—, the trusts of the said will were directed to be performed, and carried into execution; and the usual accounts and inquiries as to the estate of the testator were directed to be taken and made; and the clear residue of his personal estate was directed to be ascertained and certified.

4. Pursuant to the said decree, the Chief Clerk made his certificate dated the —— day of ——, 187—, and thereby certified that there was no debt of the said testator remaining unpaid; and that the clear residue of his personal estate consisted, amongst other things, of the sum of £10,000 bank £3 per cent. annuities, standing in the name of the Accountant-General in trust in this cause, "The personal estate account."

5. By an order dated the —— day of ——, 187—, made by your lordship [*or as may be*], on the hearing of this cause on further consideration, the interest of the said £10,000 bank annuities was directed to be paid to your petitioner during his life, or until further order.

Show the investment proposed to be made; as thus:

6. Your petitioner, on behalf of the parties interested under the testator's will in his residuary personal estate, lately entered into an agreement (conditional on the approval thereof by this honourable Court) with G. H., of, *&c.*, dated the —— day of ——, 187—, for the purchase from the said G. H., at the sum of £6,000 [*Or*, for a loan to the said G. H. of the sum of £6,000, on the security of a mortgage, bearing interest at £— per cent. per annum], of certain freehold hereditaments belonging to the said G. H., situate at, *&c.*, and comprising about —— acres: to which agreement your petitioner craves leave to refer.

7. The said proposed purchase [*Or*, loan] is a fit and proper investment of the sum of £6,000 in accordance with the trusts of the testator's will; and your petitioner is desirous that the same should be approved by this honourable Court; and that the said £6,000 should be raised out of the said £10,000 bank annuities.

Your petitioner therefore humbly prays:

1. That the said agreement may be carried into effect.

2. That the usual inquiry may be directed, as to the title to the said hereditaments (*k*).

3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments may be directed to be settled.

4. That upon the due execution thereof by all proper parties, the said £6,000 may be raised out of the said £10,000 bank £3 per cent. annuities, and paid to such person or persons as shall be certified to be entitled to receive the same.

5. That the costs of your petitioner, and all other proper parties, of this application, and consequent thereon, including the investigation of the title to the said hereditaments, (except such costs as shall be properly payable by the said G. H.,) may be taxed, and be raised and paid out of the said bank annuities.

6. That the rents and profits of the hereditaments so to be purchased [*Or*, the interest to accrue on the said investment on mortgage], and also the interest to accrue on the residue of the said bank annuities, for the time being, during the life of your petitioner, may be directed to be paid to him, or his legal personal representatives, until further order.

Or that your lordship (*Continue as in prayer of* No. 57, *ante, to the end; and add foot note: see ante*, No. 58).

1269.

Summons, to approve of the investment by trustees of a fund in their names, in a purchase, or on mortgage (*l*).

Formal parts: see ante, No. 60.

on the part of the defendants C. D. and E. F. [*or as may be*]:

1. That the conditional agreement dated the —— day of ——, 187—, entered into by the applicants with G. H., of, *&c.*, for the purchase from him, at the sum of £6,000 [*Or*, for a loan to him of the sum of £6,000 on the security of a mortgage, bearing interest at £— per cent.], of certain hereditaments belonging to him, situate at, *&c.*, may be approved on behalf of the parties interested under the will of A. B., the testator in the pleadings named, in his residuary personal estate; and be carried into effect.

2. That the usual inquiry may be directed as to the title to the said hereditaments.

3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments to the applicants, the trustees of the said will, may be settled.

(*k*) Where it is shown at the hearing of the petition that the title is good, the Court sometimes will approve of it by the order sanctioning the investment: see Dan. Pr. 1117, n. (*s*). For form of order in such case, see Seton, 491, No. 2.

(*l*) See Dan. Pr. 1118.

4. That upon the due execution thereof by such parties as shall be certified to be proper, the applicants may be at liberty to raise the said £6,000, out of a fund of £10,000 bank 3*l.* per cent. annuities standing in their names, and forming part of the testator's residuary personal estate held by them upon the trusts of the testator's will; and to pay the said £6,000 to such person or persons as shall be certified to be entitled to receive the same.

5. That the costs of the applicants, and all other proper parties, of this application, and consequent thereon, including the investigation of the title to the said hereditaments, (except such costs as shall be properly payable by the said G. H.,) may be taxed; and that the applicants may be at liberty to raise such costs out of the said bank annuities, and retain their own costs, and pay the other costs to the parties entitled.

1270.

Affidavit of a surveyor, in support of the petition or summons (*m*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

I, J. W., of (*residence*), land surveyor [*or as may be*], make oath and say as follows:

1. I have carried on the business of a land surveyor at —— aforesaid for —— years and upwards last past; and have had, during that period, considerable experience in such business; and I believe myself well qualified to judge of the value of the estate hereinafter mentioned, and of like property in the vicinity thereof.

2. In pursuance of instructions received by me from Messrs. X. & Y., the solicitors in this cause for the plaintiff [*or as may be*], I, on the —— day of ——, 187—, on behalf of the said plaintiff [*or as may be*], made a careful survey of the estate mentioned and described in the paper writing marked A., now produced and shown to me (*n*), and purporting to be (*State what; as thus:* the particulars of the Blackacre estate, belonging to G. H., situate at, *&c.*), and delineated on the plan, marked B., thereunto annexed, and now also produced and shown to me (*n*).

3. I believe that the acreage and other particulars of the estate so surveyed by me are correctly set forth in the said paper writing marked A., and that the abuttals, boundaries and subdivisions thereof are correctly delineated on the said plan marked B.

4. I have also, in pursuance of the said instructions, made a careful estimate and valuation of the estate so surveyed by me; and in so doing I have taken into consideration the tenure and situation of the said estate, the nature and quality of the land, and what would be a fair price for a purchaser to pay for the said estate as an investment, and in expectation of being able to obtain a similar or better price for the same upon a re-sale.

(*m*) See Dan. Pr. 1118.

(*n*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

5. To the best of my judgment and belief, founded on the survey, estimate and valuation aforesaid, the said estate is fully and fairly worth, as a present investment, the sum of £——.

6. *Add the special circumstances, if any, which render the proposed purchase or security desirable.*

Sworn (*&c.: see ante*, No. 12).

1271.

Affidavit of examination of the abstract of title, by the solicitor (*o*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

I, A. B., of (*Place of business*), gentleman, the solicitor for the plaintiff [*or as may be*] in this cause [*Or*, matter], make oath and say, as follows:

1. I have carefully examined and compared the abstract, written on —— sheets of paper, now produced and shown to me, and marked A. (*p*),

Or, each of the —— abstracts now respectively produced and shown to me, and marked respectively A., B., &c. (*p*): the said abstract marked A. being written on —— sheets of paper, the said abstract marked B. being written on —— sheets of paper, *&c.*, *&c.*,

with the several deeds and documents thereby purported to be abstracted.

If not with all, qualify the affidavit accordingly; as thus: except the indenture dated the 9th June, 1860, abstracted at page 11 of the said abstract (marked A.).

2. The said abstract is a true and correct abstract [*Or*, The said abstracts are true and correct abstracts] of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this cause [*Or*, matter] dated the —— day of ——, 187—.

Sworn (*&c.: see ante*, No. 12).

1272.

The like, by another person (*q*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, A. B., of (*Place of business*), gentleman, the solicitor for the plaintiff [*or as may be*] in this cause [*Or*, matter], and C. D., of the same place, clerk to the said A. B. [*or as may be*], severally make oath and say:

First, I the said A. B. for myself say, as follows:

1. *Show competency of C. D. to examine the abstract; as thus:*

(*o*) See Dan. Pr. 1118; Regul. 8 Aug. 1857, Sched. No. 18. As to the verification of the abstract, examination of the deeds, and investigation of the title, see Dart, 287—382; 1 Davidson's Conv. 485—493, 507; 1 Prideaux's Conv. 117—127; Sugd. V. & P. 405—432; and as to the penalty for concealing deeds, see 22 & 23 Vic. c. 35, s. 24; 23 & 24 Vic. c. 38, s. 8.

(*p*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*q*) See Dan. Pr. 1118.

The said C. D. has, for —— years last past, been my managing clerk ; and he has had considerable experience in the examination of abstracts of title, and other conveyancing business. In my judgment and belief he was and is fully competent to examine the abstract [*Or*, abstracts] of title mentioned in the subsequent parts of this affidavit, with the deeds and documents thereby abstracted.

And I the said C. D. for myself say, as follows :

2. I have carefully (*Continue as in* No. 1271, *ante, to the end.*)

(Sworn (*&c. : see ante*, No. 13).

1273. Memorandum of direction to the conveyancing counsel, to advise on title, and settle draft of conveyance or mortgage (*r*).

Formal parts : see ante, No. 1263.

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that the opinion of the conveyancing counsel in rotation [*or as may be* (*s*)] be procured upon the title to the hereditaments by the order of the —— day of ——, 187—, in this cause [*Or*, matter] directed to be inquired into ; and, in case such counsel shall be of opinion that a good title is shown, that the draft of the conveyance [*Or*, mortgage] by the said order directed to be settled, be perused and settled by such counsel.

1274. Certificate, verifying copy of such draft, as settled by the conveyancing counsel (*t*).

In Chancery.

(*Short Title.*)

We [*Or*, I] certify the above to be a true copy of the draft conveyance [*Or*, mortgage—*or as may be*], as settled by Mr. D., the conveyancing counsel in this cause [*Or*, matter], pursuant to the decree [*Or*, order] dated the ——, 187—.

A. & B., solicitors for the plaintiff [*or as may be*].

——, 187—.

(*r*) See Dan. Pr. 1119. As to obtaining the assistance of the conveyancing counsel, see *ib.* 1118; and *ante*, No. 1263, n. (*y*).

(*s*) See *Ibid.* For form of note of the rotation name, see *ante*, No. 1264. As to obtaining the assistance of one in particular of the conveyancing counsel, see *ante*, No. 1263, n. (*z*).

(*t*) Dan. Pr. 1119. This certificate is usually required, whenever the original draft, as settled by the conveyancing counsel, is not left at Chambers : see *ib.* n. (*h*). As to conveyances, see Sugd. V. & P. 557—565; 2 Davidson's Conv. 169—205 ; 1 Prideaux's Conv. 153—185. As to the Stamp Duties thereon, see Sugd. V. & P. 565—572; 1 Prideaux, 179—185; and the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sched. As to covenants for title, see Sugd. V. & P. 572—615 ; Dart, 1157, 1158 ; 1 Davidson, 100—145, 188—203 ; 1 Prideaux, 170—171. For forms of conveyances, see 2 Davidson, 465 ; 1 Prideaux, 186—372. As to mortgage deeds, see 2 Davidson, 548—556; 1 Prideaux, 389—439. As to the stamp duties thereon, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sched. For forms of mortgages, see 2 Davidson, 857, *et seq.*; 1 Prideaux, 440—624. For the ordinary conveyancing charges in common cases, see Morgan & Davey, 500, *et seq.*

1275.

Affidavit of examination of the engrossment of the deed (*u*).

Formal parts: see ante, No. 9.

1. I have carefully examined and compared the parchment writing now produced and shown to me, and marked A. (*x*),

Or, each of the —— parchment writings now respectively produced and shown to me, and marked respectively A., C., *&c.* (*x*),

with the draft or paper writing now produced and shown to me, and marked B. (*x*):

Or, with the —— drafts or paper writings now respectively produced and shown to me, and marked respectively B., D., *&c.* (*x*):

being the draft of the conveyance,

Or, being the drafts of the conveyance, and assignment—*or as may be*,

settled at the Chambers of the Judge to whose Court this cause [*Or*, matter] is attached, pursuant to the order made in this cause [*Or*, matter] dated the —— day of ——, 187—.

2. The said parchment writing (marked A.) is a true and correct transcript and engrossment of the said draft (marked B.).

If so: and the said parchment writing marked C. is a true and correct transcript and engrossment of the said draft marked D., *&c.*, *&c.*

1276.

Memorandum of identity of the deed (*y*).

(*Short title, and reference to the record.*)

This is the indenture of conveyance [*Or*, mortgage—*or as may be*] referred to in my certificate in this cause [*Or*, matter] dated the —— day of ——, 187—.

R. M., Chief Clerk.

1277.

Affidavit of result of searches for judgments, or other incumbrances (*z*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

I, A. B., of (*Place of business*), gentleman, the solicitor for the plaintiff [*or as may be*] in this cause [*Or*, matter],

(*u*) See Dan. Pr. 1119; Regul. 8 Aug. 1857, Sched. No. 19. Where a plan forms part of the engrossment, the affidavit should show that such plan is a true copy of the plan approved at Chambers.

(*x*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*y*) See Dan. Pr. 1119.

(*z*) As to searches for incumbrances, see Dart, 413—459, 1265; 1 Prideaux's Conv. 127—153; Sugd. V. & P. 516—548, 847; 25 & 26 Vic. cc. 53, 67; 28 & 29 Vic. c. 78; and as to relief from incumbrances, see Sugd. V. & P. 458, 556; and Dan. Pr. 327—329, 891—903. As to the inspection of the registers established by the Land Transfer Act (25 & 26 Vic. c. 53), see *ib.* ss. 15, 137; Gen. Ord. &c., published 10 May, 1866, rr. 302—304: W. N. (1866), Pt. II. 223, *et seq.*: 12 Jur. N. S. Pt. II. 222, *et seq.* As to the register of securities under the Mortgage Debenture Acts, 1865 (28 & 29 Vic. c. 78), and 1870 (33 & 34 Vic. c. 20), see Dan. Pr. Chap. XLV. The conveyancing counsel should always specify, in his opinion on the title, what searches are to be made, and against whom: *ib.* 1120, n. (*m*). Form No. 1277 is framed to meet almost

Or, I, C. D., of *&c.*, clerk to Mr. A. B., of (*&c.; as above*), make oath and say, as follows :—

1. No judgment, decree, order, rule, *lis pendens*, or writ or other process of execution : nor any memorandum or minute thereof respectively : is entered or registered from the —— day of ——, 186—, to the —— day of ——, 187—, both days inclusive, against, or in the name of, E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the Senior Master of the Court of Common Pleas at Westminster, pursuant to the statutes in that behalf : (1). Judgments, writs of execution, &c. (*a*).

If so : except the judgments [*or as may be*] specified in the (first) part of the schedule hereto :

as I know from having, on the last mentioned day, carefully searched the said books, at the office of the said Senior Master, situate in Rolls' Garden, Chancery Lane, London.

2. No judgment, decree, or order, obtained by or on behalf of the Crown : or recognizance entered into on the proper account of the Crown : or inquisition finding a debt due to the Crown : or obligation or specialty made to the Crown : or acceptance of office from or under the Crown : or writ of *extent* or of *diem clausit extremum*, or other writ or process of execution in pursuance of, or in relation to, any such judgment, decree, order, recognizance, inquisition, obligation, speciality, or acceptance of office : nor any memorandum or minute thereof respectively : is entered or registered from the —— day of ——, 186—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the said Senior Master pursuant to the statutes in that behalf : (2). Crown debts, writs of extent, &c. (*b*).

If so : except the judgments [*or as may be*] specified in the (second) part of the schedule hereto :

as I know from having, on the last mentioned day, carefully searched the said books, at the office aforesaid of the said Senior Master.

3. No annuity or rent charge : nor any memorandum or minute thereof : is entered or registered from the —— day of ——, 186—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either (3). Annuities (*c*).

every case where a search may be necessary ; but the clauses to be used in the particular case will of course depend upon the searches actually made under the advice of the conveyancing counsel.

(*a*) See *ante*, Nos. 214, *et seq.*, 909, *et seq.*, and notes thereto ; Dart, 419, 444—446, 450, 451, 455, 456.

(*b*) As to the registration, re-registration, and satisfaction of Crown debts, see 2 & 3 Vic. c. 11, ss. 8—11 ; 22 & 23 Vic. c. 35, s. 22 ; 23 & 24 Vic. c. 115 ; 28 & 29 Vic. c. 104, ss. 48, 49 ; Dart, 418, 453—455 ; 1 Prideaux's Conv. 147—150 ; Shelford's R. P. Acts, 595—600, 613, 787 ; Sugd. V. & P. 543, 544.

(*c*) As to annuities, see 18 & 19 Vic. c. 15, s. 12 ; Dart, 419, 458 ; 1 Prideaux's Conv. 150 ; Shelford's R. P. Acts, 608, 609 ; Sugd. V. & P. 547.

of their estates, in the books kept for that purpose by the said Senior Master pursuant to the statute in that behalf:

If so: except the annuities or rent charges [*or as may be*] specified in the (third) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the said books, at the office aforesaid of the said Senior Master.

(4). Inrolments in Chancery (*d*).

4. No statute, recognizance (*e*), annuity or rent charge: nor any memorial thereof: against the said E. F. and G. H., or either of them, or to affect their or either of their estates: and no assurance or disposition of lands by the said E. F. and G. H., or either of them, under the Statute 3rd and 4th William the 4th, chapter 74 (*f*): and no consent of the said E. F. and G. H., or either of them, as the protector of a settlement, to the disposition of a tenant in tail, under the last mentioned Act (*f*): has been inrolled in Her Majesty's High Court of Chancery from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive:

If so: except the statutes [*or as may be*] specified in the (fourth) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the proper books kept for such inrolment by the Clerk of Inrolments of the High Court of Chancery, at his office in Chancery Lane, London.

(5). Acknowledged deeds by married women (*g*).

5. No certificate of the taking of an acknowledgment by C. F., the wife of the said E. F., of any deed has been lodged from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, with the officer of the Court of Common Pleas at Westminster appointed in that behalf:

If so: except the certificates of acknowledgment specified in the (fifth) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the proper index kept of such certificates by the said officer, pursuant to the statute in that behalf, at his office in Lancaster Place, in the City of Westminster.

(6). Middlesex and Yorkshire registries (*h*).

6. No deed, conveyance, or other incumbrance: nor any memorial thereof: made or executed by the said E. F. and G. H., or either of them, of or affecting: and no judgment, statute or recog-

(*d*) See Dart, 419.

(*e*) As to the enrolment of the recognizances of auctioneers, see Dan. Pr. 1159; and of receivers, *ib.* Chap. XXXIX.

(*f*) See 3 & 4 Will. IV. c. 74, ss. 41, 46; Shelford's R. P. Acts, 365, 366; Sugd. V. & P. 468, 546.

(*g*) See 3 & 4 Will. IV. c. 74, ss. 85, 87, 89; 20 & 21 Vic. c. 57, s. 1; 25 & 26 Vic. c. 96; Dart, 459; Shelford's R. P. Acts, 410—420, 814, 815; Sugd. V. & P. 473, 546.

(*h*) See, as to Middlesex: 7 Anne, c. 20; 26 & 27 Vic. c. 12; East Riding of York and Hull: 6 Anne, c. 35; North Riding: 8 Geo. II. c. 6; West Riding: 2 & 3 Anne, c. 4; 5 Anne, c. 18. See also 24 & 25 Vic. cc. 95, 98; 25 & 26 Vic. c. 53, s. 104; and Dart, 419, 457; Sugd. V. & P. 546.

nizance to affect or bind: any honors, manors, lands, tenements, or hereditaments,

Or, the manors, lands, tenements, and hereditaments [*or as may be*] in the order in this cause [*Or*, matter] dated the —— day of ——, 187—, mentioned, or any of them,

of the said E. F. and G. H., or either of them, in the county of Middlesex,

Or, in the east riding of the county of York, or the town and county of the town of Kingston-upon-Hull,

Or, in the north riding of the county of York,

Or, in the west riding of the county of York,

has been registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, in the books kept for that purpose by the Registrar of deeds and so forth for the said county [*Or*, riding], pursuant to the statutes in that behalf:

If so: except the deeds [*or as may be*] specified in the (sixth) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the said books at the office of the said Registrar, situate at (*State where*).

7. No judgment, decree, order, rule, or *lis pendens:* nor any memorandum or minute thereof respectively: is entered or registered from the —— day of ——, 186—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the Prothonotary of the Court of Common Pleas for the county palatine of Lancaster, (7). Palatine registries (*i*).

Or, by the respective prothonotaries of the Court of Pleas of the county palatine of Durham, and of the Court of Chancery of the same county palatine,

pursuant to the statutes in that behalf:

If so: except the judgments [*or as may be*] specified in the (seventh) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the said books, at the office of the said prothonotary [*Or*, prothonotaries] situate at (*State where*).

8. No judgment, decretal order, final decree, or order, of any County Court in England or Wales, is registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the Registrar of County Court Judgments in (8). County Court registry (*k*).

(*i*) See 1 & 2 Vic. c. 110, s. 21; 18 & 19 Vic. c. 15, ss. 2, 3, 9; 23 & 24 Vic. c. 38, s. 2; 27 & 28 Vic. c. 112; Shelford's R. P. Acts, 585, 604, 606; Sugd. V. & P. 152.

(*k*) See 15 & 16 Vic. c. 54, s. 18; 28 & 29 Vic. c. 99, s. 15; and County Court Orders, 1 Jan. 1868, r. 268 (Common Law), xxiii., 24 (Equity): W. N. (1868), Pt. II. 29, 37.

London, pursuant to the statute and County Court rules in that behalf:

If so: except the judgments [*or as may be*] specified in the (eighth) part of the schedule hereto:

as I know from having, on the last mentioned day, carefully searched the said books at the office of the said Registrar in New Street, Spring Gardens, in the city of Westminster.

(9). Creditor deeds, liquidations, and compositions (*l*).

9. No deed of arrangement, composition, inspectorship, or other deed, instrument, or agreement whatsoever, made or entered into between the said E. F. and G. H., or either of them, and their or his creditors, or any trustee on behalf of such creditors, under the provisions of "The Bankruptcy Act, 1861" (*m*), is registered in the Court of Bankruptcy in London, or with the Chief Registrar thereof, pursuant to such provisions: and no petition or resolution for liquidation by arrangement of the affairs of the said E. F. and G. H., or either of them, or for a composition arrangement between them, or either of them, and their or his creditors, under the provisions of "The Bankruptcy Act, 1869" (*n*), is filed or registered in the London Court of Bankruptcy, pursuant to such provisions, and the General Order (*o*) of the said Court in that behalf:

If so: except the deeds [*or as may be*] specified in the (ninth) part of the schedule hereto:

as I know from having, on the —— day of ——, 187—, carefully searched the proper books kept for that purpose at the Office for Registration of Arrangement Proceedings (*o*), situate at (*State where*).

(10). Bankruptcy (*l*).

10. The said E. F. and G. H. have not, nor has either of them, been adjudged bankrupt, and no fiat in bankruptcy has been issued against them, or either of them, and no petition has been filed for an adjudication of bankruptcy against them, or either of them, or for an arrangement between them, or either of them, and their or his creditors:

If so: except as appears in the (tenth) part of the schedule hereto:

as I know from having, on the —— day of ——, 187—, carefully searched the proper books kept for that purpose, at the office of the Comptroller in Bankruptcy (*p*), situate at (*State where*).

(11). Insolvency (*q*).

11. No order vesting the real and personal estates and effects of the said E. F. and G. H., or of either of them, in the provisional

(*l*) See Dart, 419, 458; 1 Prideaux's Conv. 152; Sugd. V. & P. 541.

(*m*) 24 & 25 Vic. c. 134; see ss. 187, 192—194; repealed by the Bankruptcy Repeal and Insolvent Court Act, 1869 (32 & 33 Vic. c. 83), s. 20, from 1 Jan. 1870; and see Gen. Ord. in Bankruptcy, 1 Jan. 1870, rr. 315—318.

(*n*) 32 & 33 Vic. c. 63, ss. 125, 126.

(*o*) See Gen. Ord. in Bankruptcy, 1 Jan. 1870, r. 315.

(*p*) *Ibid.*, rr. 237—239.

(*q*) See the Bankruptcy Act, 1861, s. 27 (repealed as above); and the Bank-

assignee of the estates and effects of Insolvent Debtors in England, has been made, and no assignee of the estate and effects of the said E. F. and G. H., or either of them, has been appointed by the Court for Relief of Insolvent Debtors in England :

If so: except as appears in the (eleventh) part of the schedule hereto :

as I know from having, on the —— day of ——, 187—, carefully searched in the proper books kept for the entry or registry of such order and appointment (*State where*).

12. No memorial of any absolute order of the Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," or of any order of the said Commissioners apportioning a charge, or releasing or exempting lands from a charge, in pursuance thereof, is registered at the office of the Land Registry in England, in the names of the said E. F. and G. H., or either of them, as the landowners or landowner :

(12). Improvement of Land Act, 1864 (*r*).

If so: except as appears in the (twelfth) part of the schedule hereto :

as I know from having, on the —— day of ——, 187—, carefully searched in the proper books kept for the entry or registry of such orders, at the office of the said Land Registry, situate in Lincoln's Inn Fields, in the county of Middlesex.

13. E. F., and C. his wife, and G. H., hereinbefore named, are respectively the same persons as the persons of those respective names who are mentioned or referred to in the opinion dated the ——, 187—, of Mr. A., the conveyancing counsel, on the title to the hereditaments inquired into pursuant to the order in this cause [*Or*, matter] dated the —— day of ——, 187—.

(13). Identity of persons for whose names the searches were made (*s*).

Sworn (*&c.: see ante*, No. 12).

The schedule above referred to.

(*Set out the particulars of such entries, if any, as may be found; and divide the schedule into parts, as above suggested.*)

1278. Chief Clerk's certificate of result of inquiry as to title, and of the settlement (and execution) of the deed (*t*).

Formal parts: see post, No. 1511.

A good title can be made to the hereditaments in the order dated the —— day of ——, 187—, in this cause [*Or*, matter] mentioned.

A proper conveyance [*Or*, mortgage—*or as may be*] of the

ruptcy Repeal and Insolvent Court Act, 1869 (32 & 33 Vic. c. 83), ss. 4, *et seq.*, and Gen. Ord. thereunder of 14 March, 1870.

(*r*) 27 & 28 Vic. c. 114, ss. 56, 69; and see Dan. Pr. Chap. XLV.

(*s*) The identity of the persons for whose names the searches have been made, with the persons for whose names the searches have been directed to be made, should always be shown distinctly by the affidavit.

(*t*) See Dan. Pr. 1119, 1120. Where enrolment is required, the certificate of execution should not be issued till the conveyance has been left at the Inrolment Office, and the receipt of the Clerk of Inrolments is produced: Dan. Pr. 1120, n. (*q*).

said hereditaments has been settled: consisting of an indenture intended to be made between (*Describe the parties, as in the deed*); and which indenture is identified by my signature in the margin of the engrossment thereof.

The said B. A. and D. C. are the parties by whom the said indenture is to be executed before a sale is made of the bank annuities by the said order directed to be sold—*or other contingency mentioned in the order.*

Or, if the deed is executed by those parties before the certificate is made (*u*), *say:* The said B. A. and D. C.: who were the only parties to execute the said indenture before a sale (*&c.: as above*): have respectively duly executed the said indenture.

The said B. A. and D. C. are the parties entitled to receive the sum of £6,000 in the said order mentioned: to be raised in manner thereby directed. The said £6,000 is to be paid to the said B. A. and D. C. jointly.

Or, in the following proportions, namely, £4,000 part thereof to the said B. A., and £2,000 residue thereof to the said D. C.

The evidence produced, *&c.*

1279.

Affidavit of execution of the deed (*v*).

Formal parts: see ante, No. 9.

1. I saw B. A. and D. C., two of the parties to the indenture of conveyance [*Or,* mortgage—*or as may be*] dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*x*),

If so: being the indenture mentioned in the Chief Clerk's certificate in this cause [*Or,* matter] dated the —— day of ——, 187—,

duly sign, seal, and as their respective acts and deeds deliver the said indenture.

2. The signatures "——," and "——," set and subscribed to the said indenture, as two of the parties executing the same, are of the respective proper handwriting of the said B. A. and D. C.

3. The signature "——" set and subscribed to the attestation, indorsed on the said indenture, of the execution thereof by the said B. A. and D. C., is of my proper handwriting.

1280.

Certificate of execution of the deed (*y*).

Formal parts: see post, No. 1511.

B. A. and D. C., in my certificate in this cause [*Or,* matter] dated the —— day of ——, 187—, respectively named, have respectively duly executed the indenture of conveyance [*Or,*

(*u*) See Dan. Pr. 1120, n. (*p*).

(*v*) *Ibid.*, 1120. For another form of affidavit, see *ante,* No. 752.

(*x*) Exhibit same. For form of memorandum of exhibit, see *ante,* No. 43.

(*y*) See Dan. Pr. 1120.

mortgage—*or as may be*] in such certificate mentioned to have been settled, and to be an indenture to be executed by them respectively.

The evidence produced, *&c.*

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12. *Accounts* (*z*).

1281. Direction for a short, or four-day, order to issue, to leave accounts and statements, where a summons to proceed has been heard (*a*).

Master of the Rolls
[*Or*, Vice-Chancellor ——], at Chambers. } ——, 187—.

(*Title of the cause or matter, and reference to the record.*)

Appeared: (*State who appeared on the application for the direction; as thus:*

Mr. A., for the plaintiff.

Mr. B., for the defendant C. D.

Mr. E., for F. G., having liberty to attend the proceedings).

Read: Decree [*Or*, Order—*directing the accounts and inquiries*], dated ——, 187—.

The Master of the Rolls [*Or*, Vice-Chancellor ——] orders, that the defendant C. D. [*or as may be*] do, on or before the —— day of ——, 187—, or subsequently within four days after service, leave at his Chambers the following accounts and statements, duly verified by affidavit; namely: (*Set out the accounts and inquiries in the words of the decree or order, and with the like numbers attached: substituting* "a statement," *for* "an inquiry").

R. M., Chief Clerk.

To the Registrar, Mr. M.

(*z*) See Dan. Pr. 1120—1138. As to suits for an account, in general, see Seton, 107—114; Adams on Eq. 220—228; Cory on Accounts, 243, *et seq.*; Jeremy on Eq. 504—550, 602; Story, Eq. Jur. ss. 441—529. As to the species of accounts taken at Chambers, see Dan. Pr. 1120; and see, as to accounts in the following cases:—guardians of infants' estates, Dan. Pr. 1196, 1197, and *post*, No. 1473; mortgagees, Dan. Pr. 1138, 1139, and *post*, No. 1308, *et seq.*; partners, Dan. Pr. 1121, n. (*c*), 1139, 1140, and *post*, Nos. 1320, 1321; receivers, managers, and consignees, Dan. Pr. Chap. XXXIX., and *post*, Chap. XXXIX.; and trustees, Dan. Pr. 1125, 1133, *et seq.*, and *post*, No. 1291, *et seq.* Unless otherwise directed by the Judge, the account is made out by the accounting party, and verified by his affidavit: Ord. XXXV. 33. As to the course where the account has, in whole or in part, been scheduled to the answer, see Dan. Pr. 1123. As to the examination of accounting parties on interrogatories, and for forms of interrogatories and examinations, see *ante*, No. 1178, *et seq.*, and notes thereto. As to the employment of accountants, see *ante*, No. 1189, n. (*u*).

(*a*) See Dan. Pr. 1121. For form of order, see Seton, 1232, No. 1. The Registrars request that this direction may be indorsed on the summons to proceed: instead of being issued as a separate document. As to the mode of enforcing the order, see Dan. Pr. 1122; and *ante*, No. 922, *et seq.*, and notes thereto. As to directions to bring in an account, see Dan. Pr. 1121; Ord. XXXV. 16.

1282.

Summons for a short, or four-day, order to leave accounts and statements (*b*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], that the defendant C. D. [*or as may be*] may be ordered, within four days after service, to leave in my chambers the following accounts (*Continue as in* No. 1281, *ante, to* "an inquiry").

1283.

Summons for further time to leave accounts (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that he may have until the —— day of ——, 187—, to leave at my Chambers the accounts and statements, verified by affidavit, directed to be left by him thereat, pursuant to the decree [*Or*, order] dated the —— day of ——, 187—.

1284.

Attachment for not leaving accounts (*d*).

Præcipe and indorsement: The same as Nos. 932, 934, *ante:* describing the contempt correctly; as thus:

"in not leaving at the Chambers of the Master of the Rolls [*or as may be*] situate at, *&c.*, the following accounts and statement, duly verified by affidavit; that is to say: 1. An account of, *&c.;* 2. A statement of, *&c.:* as by the said order the said C. D. was commanded."

The writ: The same as No. 933, *ante.*

1285.

Affidavit in support of attachment for not leaving accounts (*e*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served the defendant C. D. [*or as may be*], with the order made in this matter [*Or*, cause] by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], dated the —— day of ——, 187—, whereby it was ordered that (*Recite the directory parts of the order*): by delivering a true copy of the said order to, and leaving the same with, the defendant C. D. [*or as may be*], at (*State where*), in the (county) of ——; and I at the same time showed to him the said original order, duly passed and entered.

(*b*) See Dan. Pr. 1121. For orders in like case, see *Butt* v. *Harcourt*, V. C. S. at Chambers, 11 June, 1870, Reg. Lib. A. 1618; Seton, 1232, No. 1.

(*c*) See Dan. Pr. 1122; Ord. XXXVII. 17, 18. For order in like case, see *Croskey* v. *European, &c., Steam Co.*, V. C. W. at Chambers, 13 Jan. 1864, Reg. Lib. A. 55. The application should be supported by an affidavit, showing due diligence, and that further time is necessary: Dan. Pr. 1222. As to when a summons is unnecessary, see *ib.* n. (*m*).

(*d*) See Dan. Pr. 1122; and notes to Nos. 932—934, *ante.* For attachment in like case, see *Coles* v. *Coles*, 19 July, 1866, Reg. Lib. A. 1551. The attachment will be sealed on production of the order, and of an affidavit of service thereof and default made: see Dan. Pr. 1122. For form of affidavit, see *post*, No. 1285.

(*e*) See Dan. Pr. 1122. The affidavit should, if possible, be sworn on the day the attachment is issued: *ib.*

Or, an office copy of the said order, duly sealed with the seal of the Report Office of this Court, and signed by E. F., esquire, one of the Clerks of Records and Writs of this Court.

2. The copy served as aforesaid of the said order had indorsed thereon, at the time of the aforesaid service thereof, a memorandum in the words following; that is to say: (*Set out a copy of the memorandum*).

3. *Prove that the order has not been obeyed; as thus:* I have this —— day of ——, 187—, searched the proper register of proceedings kept in this cause [*Or*, matter] at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——]; and it appears from the said register, and also from inquiries I have made of the Clerks attached to the said Chambers, and I verily believe the fact to be, that the said accounts and statements directed by the said order of the —— day of ——, 187—, to be left at the said Chambers by the said defendant C. D. [*or as may be*] have not, nor has any of them, been left at the said Chambers.

1286. Petition of course, for discharge from custody, on leaving accounts (*f*).

Title—and address to the M.R.: see ante, No. 56.

The humble petition of the defendant C. D. [*or as may be*].

Showeth as follows:

1. By an order made in this cause [*Or*, matter], dated the —— day of ——, 187—, your petitioner was directed to leave at the Chambers of your lordship [*or as may be*], duly verified by affidavit, certain accounts and statements therein specified.

2. On the —— day of ——, 187—, your petitioner was arrested on an attachment issued against him for his contempt in not leaving the said accounts and statements; and he is now in the custody of the keeper of Holloway prison [*or as may be*], for such contempt.

3. Your petitioner has now left the said accounts and statements at the said Chambers; and has filed an affidavit duly verifying the same: as appears by the certificate of the Chief Clerk of the said Judge, indorsed hereon.

Your petitioner therefore humbly prays, that he may be discharged from the said custody, touching his said contempt: upon payment or tender of the costs thereof to the (plaintiff's) solicitor or agent.

And your petitioner will ever pray, &c.

(*f*) See Dan. Pr. 1122. For order in like case, see *Re Moreton, Hopcroft* v. *Moreton*, M. R., 18 July, 1870, Rolls' Lib. The order will not be made on a petition of course at the Rolls, unless the petition is indorsed with, or accompanied by, a certificate to the effect of Form No. 1287. In other cases, the application must be made by motion of course: see No. 1288; supported by affidavit: see No. 1289; or by *ex parte* summons: see No. 1290.

1287.

Certificate of accounts having been left (*g*).

Master of the Rolls' / [*Or*, Vice-Chancellor ——'s] Chambers. } ——, 187—.

I certify that the within named petitioner has left at these Chambers the within mentioned accounts and statements, pursuant to the within recited order of the ——, 187— ; and has filed an affidavit duly verifying the same.

R. M., Chief Clerk.

1288.

Motion paper, for discharge from custody on leaving accounts (*h*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant C. D., [*or as may be*], that he may be discharged from the custody of the keeper of Holloway prison [*or as may be*], touching his contempt for not leaving certain accounts and statements at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], pursuant to the order dated ——, 187— : upon payment or tender of the costs of contempt to the (plaintiff's) solicitor or agent : the accounts and statements having now been left.

An office copy of the order, and affidavit in support, accompany.

1289.

Affidavit in support (*h*).

Formal parts: see ante, No. 9.

1. The several accounts and statements which, by the order made in this cause [*Or*, matter] dated the —— day of ——, 187—, the defendant C. D. [*or as may be*], was ordered to leave, duly verified by affidavit, at the chambers of his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], were left at the said Chambers on the —— day of —— ; and an affidavit of the said defendant C. D. [*or as may be*], duly verifying the said accounts and statements, was filed in the Record and Writ Clerks' office on the —— day of ——, pursuant to the said order : as I know (*Show means of knowledge ; as thus :* from having left the said accounts and statements, and filed the said affidavit, in manner aforesaid).

2. The defendant C. D. [*or as may be*] is now in the custody of the keeper of Holloway prison [*or as may be*], under an attachment for a contempt in not leaving the said accounts and statements, pursuant to the said order : as I know from (*Show means of knowledge*).

(*g*) See Dan. Pr. 1122. The certificate is indorsed on the petition.

(*h*) See Dan. Pr. 1122; and *ante*, No. 1286, n. (*f*).

1290.
Summons, for discharge from custody, on leaving accounts (*i*).

Formal parts: see ante, No. 60.
on the part of the defendant C. D. [*or as may be*], that he may be discharged from the custody of the keeper of Holloway prison [*or as may be*], touching his contempt for not leaving at my Chambers certain accounts and statements, duly verified by affidavit, pursuant to the order dated the —— day of ——, 187—: upon payment or tender of the costs of contempt to the (plaintiff's) solicitor or agent.

1291.
Affidavit by joint executors and trustees, verifying their accounts, and answering the usual inquiries, as to real and personal estate (*k*):

In Chancery.
(*Title of the cause, and reference to the record.*)
We, A. B., of (*residence and addition*), C. D., of, *&c.*, and E. F., of, *&c.*, the above named defendants [*or as may be*], severally make oath and say, as follows:—

(*i*) See Dan. Pr. 1122; and *ante*, No. 1286, n. (*f*).

(*k*) See Dan. Pr. 1126, n. (*c*). For this Form, see Regul. 8 Aug. 1857, Sched. No. 6. This form of affidavit, as far as applicable, must be strictly adhered to; and great responsibility will attach to solicitors if they do not frame their accounts and affidavits properly: as defects may occasion the committal of their clients, where an order has been made to leave the accounts: see Bloxam, 48. For further remarks as to the preparation of the affidavit and accounts, see Dan. Pr. 1123—1126. For forms of administration decrees, see *ante*, Nos. 870, 871; Seton, 115, *et seq.*, 149, *et seq.*, 231, *et seq.*, 251, *et seq.*; and against derivative executors and administrators, Seton, 735—737, 744—748. See, as to the following points:—Appointment of executors, succession to the executorship, and renunciation of the office: Dodd & Brooks, 296—318—323—336; Williams' Exors. 230—243, 1961—1967; Seton, 118—122; Smith's Comp. 1069—1083, 1239. Probate: Dodd & Brooks, 337—392; Williams' Exors. 277—386, 2002—2006. Letters of administration: Dodd & Brooks, 393—517; Williams' Exors. 386—522, 1916—1921. Confirmations and amendment of grants: Dodd & Brooks, 518—536—538. Surrender and revocation of grants: Dodd & Brooks, 539—556; Williams' Exors. 1921, 2005. Stamp duties on probates and letters of administration: Dodd & Brooks, 564—586, 1192—1195, 1291; Williams' Exors. 2020; Trevor on Taxes, 8—80. Legacy duty: Williams' Exors. 2021, 2022; Trevor on Taxes, 81—282. Succession duty: Williams' Exors. 2022; Trevor, 283—366. For the Regulations of the Inland Revenue office, forms and tables, see Trevor, 367—478. For the cases, and forms of decrees and orders, on the following subjects connected with the accounts of executors, administrators and trustees, see—Account and admission of assets: Seton, 737—739; Ram on Assets, 663—666; Williams' Exors. 1893—1895, 1913. Appropriation and assent: Seton, 742, 743; Williams' Exors. 1925, 1926. Breach of trust: Seton, 748, 752—755; Lewin, 792—794; Williams' Exors. 226. Charging with interest: Seton, 761, 765—767; Lewin, 836; Williams' Exors. 1702—1710. Concurrence and liability: Seton, 755—758; Lewin, 843, 844; Williams' Exors. 1987. Costs and expenses: Dan. Pr. 1303, *et seq.*; Seton, 767—770; Lewin, 806—808; Williams' Exors. 1939. Discharge and indemnity: Seton, 743, 744; Lewin, 833, 834; Williams' Exors. 1247, *et seq.* Payments: Seton, 740, 741; Lewin, 858; Williams' Exors. 1997,

(1). Inventory of personal estate at death (*l*).

1. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written (*l*), a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator, in the decree [*Or*, order] dated the —— day of ——, 187—, made in this cause, named or referred to, and who died on the —— day of ——, 187—, was possessed or entitled at the time of his death.

If the decree or order directs only an account of personal estate not specifically bequeathed, add : and not by him specifically bequeathed.

2. Save what is set forth in the said first schedule,

If so : and what is by the said testator specifically bequeathed,

the said testator was not, to the best of our knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from us, or any or either of us, on any account whatsoever, nor to any leasehold, or other personal estate, goods, chattels, or effects, in possession, or reversion, absolutely, or contingently, or otherwise howsoever.

(2). Funeral expenses (*m*).

3. The said testator's funeral expenses have been paid ; and the same consist of the items of disbursement numbered —— and —— in the account marked A. hereinafter referred to.

Or, if not paid, state the amount due, and to whom due ; as

1998. Receipts and advances: Seton, 739, 740 ; Lewin, 866, 867. Retainer: Seton, 741, 742 ; Lewin, 873 ; Williams' Exors. 971—980, 2014 ; Ram, 339—350. And wilful default : Seton, 764, 765 ; Williams' Exors. 1658, *et seq.*, 1949, 1950 ; Lewin, 893. As to obtaining an inspection of accounts filed in the legacy duty department, see Dan. Pr. 1066. As to the apportionment of rents, dividends, and other periodical payments, under 11 Geo. II. c. 19, s. 15 ; 4 & 5 Will. IV. c. 22 ; and 33 & 34 Vic. c. 35, see cases collected in Dan. Pr. 1125, n. (*b*) ; and see Williams' Exors. 776, *et seq.;* L. C. Conv. 248—259 ; Smith's Comp. 26—29 ; Woodfall, 361—369.

(*l*) See Dan. Pr. 1124. The first schedule to the affidavit should show the state of the assets at the testator's death ; the second, at the time the affidavit is sworn ; and the account of personal estate, verified by the affidavit, should disclose all the receipts and payments in respect of the assets between those periods. Thus, where a testator leaves a sum of bank stock, which the executor afterwards sells, and invests the proceeds in three per cent. consols : the bank stock will appear in the first schedule ; the proceeds of the sale on the debit side of the account ; the cost of the consols on the credit side ; and the amount of the consols will form an item in the second schedule, as an asset outstanding or undisposed of : Dan. Pr. 1125. As to inventories and commissions of appraisement in the Court of Probate, see Williams' Exors. 1980 ; Dodd & Brooks, 557—563. As to the personal estate which an executor or administrator is entitled to receive *virtute officii*, see Williams' Exors. 615—855, 1956—1959 ; Dodd & Brooks, 564—577.

(*m*) See Dan. Pr. 1124. As to the amount allowable for funeral expenses, see cases cited *ib.* n. (*x*) ; Williams' Exors. 906—910, 1971 ; Seton, 741, 768 ; 4 Burn's Ecc. Law, 468 ; Ram on Assets, 331—338.

thus: The said testator's funeral expenses amount to £——; and the same remain due to J. S., of N., in the county of M., undertaker.

4. We have, in the account marked A. now produced and shown to us (*o*), according to the best of our knowledge, information and belief, set forth a full, true and particular account of the personal estate of the said testator, (3). Account of personal estate (*n*).

If so: not by him specifically bequeathed,

which has come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our, or any or either of our order, or for our, or any or either of our use: with the times when, the names of the persons from whom, and on what account, the same has been received; and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of, or on account of, the said testator's funeral expenses, debts, and personal estate: together with the times when, the names of the persons to whom, and the purposes for which, the same were disbursed, allowed, or paid.

5. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., we have not, nor has any or either of us, nor have nor has any other persons or person by our, or any or either of our order, or for our, or any or either of our use (*p*), possessed, received, or got in, any part of the said testator's personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding, or undisposed of, consists of the particulars set forth in the second schedule hereunder written (*r*). (4). Personal estate outstanding (*q*).

(*n*) See Dan. Pr. 1124. For form of decree, dispensing with the usual personal estate account: the estate being ascertained at the hearing, and particularised in the decree: see *Osborne* v. *Marsden*, M. R. 9 March, 1863, Reg. Lib. B. 535.

(*o*) For form of this account, see *post*, No. 1292. Where the decree or order directs that, in taking the account, capital is to be distinguished from income, the account should be divided into two parts: the first embracing the transactions as to capital; the second, as to income; and the affidavit be varied accordingly.

(*p*) This should accord with the decree or order directing the account to be taken.

(*q*) See Ord. XXIII. 14; Dan. Pr. 1123, n. (*q*), 1124.

(*r*) This schedule should contain all the existing assets: such as bank annuities, whether in the executors' names or in Court, and any cash in the hands of the executors: Bloxam, 48.

7. Save what is set forth in the said second schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

(5). Real estate at death (*s*).

8. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the third schedule hereunder written the particulars of all the real estate which the said testator was seised of, or entitled to, at the time of his death.

If the decree, or order, directs the estates at the date of the testator's will to be distinguished from the estates at the testator's death, substitute for par. 8 *above the following*:

8. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the first part of the third schedule hereunder written the particulars of all the real estate which the said testator was seised of, or entitled to, at the date of his will, and in the first and second parts of such schedule [*or as may be*] the particulars of all the real estate which the said testator was seised of, or entitled to, at the time of his death.

9. Save what is set forth in the said schedule, the said testator was not, to the best of our knowledge, information, or belief, at the date of his will, or at the time of his death [*or as may be directed*], seised of, or entitled to, any real estate, in possession, remainder, or reversion, absolutely or contingently, or otherwise howsoever.

(6). Incumbrances(*s*).

10. We have, according to the best of our knowledge, information, and belief, set forth in the fourth schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect (*t*).

(7). Account of rents and profits (*s*).

11. We have, in the account marked B. now produced and shown to us (*u*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate which have come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our, or any or either of our, order, or for our, or any or either of our use (*x*); and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same has been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments, made by us, or

(*s*) See Dan. Pr. 1125.

(*t*) If there is no incumbrance, alter the paragraph accordingly: see *post*, No. 1296, par. 3.

(*u*) For form of this account, see *post*, No. 1293.

(*x*) This should accord with the decree or order directing the account to be taken.

any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said account marked B., we have not, nor has any or either of us, nor have nor has any other persons or person by our or any or either of our order, or for our or any or either of our use (*y*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid or allowed, as above stated.

The first schedule above referred to.

Account of the testator's personal estate, at his death.

(*Set out the particulars; as in the following examples:*)

1. £50, cash in the house.
2. £100, cash at the testator's bankers, Messrs. A. & B.
3. £1000, bank 3*l.* per cent. annuities, standing in the testator's name.
4. £10, due from John James, for half year's rent of house at ——, to Michaelmas, 1870.
5. £32. 6*s.* 8*d.*, balance remaining due from John Thomas, on account of half year's rent of farm at ——, to Michaelmas, 1870.
6. £300, a debt due from Samuel Jones, on a bond: with interest from ——, at —— per cent.
7. A leasehold house situate at ——, held under a lease for a term of —— years, which will expire on ——, 18—, at a rent of £— a year: underlet to James Evans for a term which will expire on ——, 18—, at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans at Christmas, 1866.

The second schedule above referred to.

Personal estate outstanding or undisposed of.

(*Set out the particulars; as in the above examples* (*z*).)

(*y*) This should accord with the decree or order directing the account to be taken.

(*z*) See *sup.* n. (*r*).

The third schedule above referred to.

Real estate (*a*).

(*Set out a short particular of the real estate; as in the following examples* (*b*):)

1. A freehold mansion, and grounds attached, containing about three acres, situate at ——, and called "The Evergreens:" in the testator's occupation at his death, and now in hand.

2. A freehold farm, called "Low End Farm," situate at ——, containing about 500 acres, and in the occupation of James Evans, under a lease for a term which will expire at Michaelmas, 1880, at the yearly rent of £600.

3. Twenty freehold cottages, situate at —— aforesaid, in the occupation of Michael Sullivan, *&c.*, as weekly tenants, at rents amounting collectively to £— a year.

4. Four copyhold closes of meadow land, situate at —— aforesaid, in the occupation of Samuel Jones, as yearly tenant, at £12 a year, and held of the Manor of Pennefathers.

The fourth schedule above referred to.

Incumbrances affecting the real estate.

(*Set out a short particular of the incumbrances; and show what part of the above real estate is subject to each; as in the following examples* (*b*):)

1. The mansion and grounds numbered 1 in the third schedule above written are subject to a mortgage created by the testator, by indenture dated, *&c.*, in favour of Reuben Johnson, and now vested in Alfred Symes, of (*residence and addition*), as security for £500 due to him, with interest at £5 per cent.

2. The farm numbered 2 in the said third schedule is charged with the payment of an annuity of £40 to Jemima Brown, of, *&c.*, widow, during her life, under the will of the testator's brother Ephraim Hughes.

3. The close of land numbered 4 in the said third schedule is subject to a conditional surrender made thereof by the testator on the —— day of ——, 187—, in favour of the said Alfred Symes, as security for the payment to him of £300, with interest at £4 per cent.

(*a*) As to dividing this schedule into parts, see par. 8 of the affidavit, *sup.*

(*b*) These examples are not given in the form of affidavit in Regul. 8 Aug. 1857, Sched. No. 6.

In Chancery.

1292.

Account of personal estate, referred to in No. 1291 (*c*).

A.

(*Short title of the cause, and reference to the record.*)

This account marked A. was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit sworn this —— day of ——, 187—,

before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn: see ante*, No. 12).

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.
	1870.			£ s. d
1		. . . .	Found in house	
2		Evans & Co. . .	Balance at bankers . .	
3		. . . .	Half year's dividend on £2000 bank £3 per cent. annuities, due ——.	
4		John James . .	Half year's rent of freehold, due ——.	
5		Samuel Jones .	Bond debt of £300 and interest from —— to ——.	
6		James Evans .	Half year's rent of leasehold house, due—	
7		William Williams	Produce of sale of the above leasehold house . .	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	1870.			£ s. d.
1		James Price . .	Undertaker's bill for funeral . .	
2		Messrs. A. & B.	Proctors' bill for probate .	
3		John George . .	A debt due to him for medical attendance . .	
4		James Price . .	Bond debt of £1000, and £25 for interest thereon from —— to ——.	

(*c*) See Dan. Pr. 1124, 1126. For this Form, see Regul. 8 Aug. 1857, Sched. No. 4. The items on each side should be placed in chronological order, so that the state of the account may be ascertained at any date, and be numbered consecutively; and the numbers of the items of debit should form a distinct series from the numbers of the items of credit; as shown in the above examples: see Dan. Pr. 1126, n. (*d*). The account should include any sums received since the decree: Dan. Pr. 1126. As to including the costs of the administration, or in the suit, see *ib.* As to exhibiting, and authenticating alterations in the account, see *ib.* 790, 1059, 1126; Regul. 8 Aug. 1857, rr. 10, 11. The account must be written on foolscap paper, bookwise: *ib.* r. 17; Dan. Pr. 1126. As to handing copies of the account to the other parties, see *ib.* 1127; Ord. XXXV. 26. As to obtaining copies otherwise, see Ord. XXXVI. 3—6, 13; Regul. to Ord. IV. 1.

1293.
Account of rents and profits, referred to in No. 1291 (*d*).

In Chancery.

B.

(*Short title of the cause, and reference to the record.*)

This account marked B. was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit sworn this —— day of ——, 187—,

before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn: see ante*, No. 12).

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received.
	1870.			£ s. d.
1		John James . .	Half year's rent for farm in parish of ——, due ——	
2		Thomas Jones .	One quarter year's rent of house at ——, due —	
3		John James . .	Same as No. 1, due ——	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	1870.			£ s. d.
1		Sun Insurance office . .	One year's insurance against fire, due —— .	
2		Thomas Carpenter . . .	Repairs at John James's farm . .	
3		James Francis .	Income tax half year due 10th October, 187— . .	

1294.
Affidavit by joint executors and trustees, verifying their supplemental accounts of personal estate, and rents and profits (*e*).

(*Title—and names, &c., of the deponents: as in* No. 1291, *ante.*)

1. We have in the account marked C., now produced and shown to us (*f*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of the personal estate of G. H., the testator in the decree [*Or*, order] made in this cause, dated the —— day of ——, 187—, named or referred to,

If so: and not by him specifically bequeathed,

which, since the —— day of ——, 187— (the time to which our former account thereof, marked A., verified by our affidavit filed in this cause the —— day of ——, 187—, was made up and rendered), has come to our hands (*Continue as in par. 4 of* No. 1291, *ante, to the end of that par.*).

2. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that

(*d*) See Dan. Pr. 1125. For this form, see Regul. 8 Aug. 1857, Sched. No. 5; and see note to No. 1292, *ante.*

(*e*) See Dan. Pr. 1126; and notes to No. 1291, *ante.*

(*f*) This account will be the same in form as the previous account: see

save and except as appears in the said accounts marked A. and C., we have not, nor has any or either of us, nor have nor has any other persons or person by our, or any or either of our order, or for our or any or either of our use (*g*), possessed, received, or got in, any part of the said testator's personal estate, nor any money in respect thereof; and that the said account marked C. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

3. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding, or undisposed of, consists of the particulars set forth in the schedule hereunder written (*h*).

4. Save what is set forth in the said schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

5. We have, in the account marked D., now produced and shown to us (*i*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate, which since the —— day of ——, 187— (the time to which our former account thereof, marked B., verified by our (said) affidavit filed in this cause the —— day of ——, 187—, was made up and rendered), have come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our, or any or either of our order, or for our or any or either of our use (*g*); and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

6. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said accounts marked B. and D., we have not, nor has any or either of us, nor have nor has any other persons or person by our, or any or either of our order, or for our, or any or either of our use (*g*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked D.

ante, No. 1292; but care should be taken to distinguish it by a different letter, and to number the items on each side *in continuation* of the numbers of the items in the previous account; as neglect so to do is apt to lead to much confusion.

(*g*) This should accord with the decree or order directing the account to be taken.

(*h*) As to this schedule, see *ante*, No. 1291, n. (*r*).

(*i*) This account will be the same in form as the previous account: see *ante*, No. 1293; but see *sup.* n. (*f*).

does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated.

The schedule above referred to.

(*Set out the particulars of the personal estate outstanding or undisposed of: For examples, see first schedule to* No. 1291, *ante.*)

1295.

Affidavit by a sole executor or administrator, verifying his account, and answering the usual inquiries as to personal estate (*k*).

Formal parts: see ante, No. 9.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator [*Or,* intestate] in the decree [*Or,* order] made in this cause dated the —— day of ——, 187—, named or referred to, and who died on the —— day of ——, 187—, was possessed or entitled at the time of his death.

In a case of testacy, add, if the decree or order is so qualified: and not by him specifically bequeathed.

2. Save what is set forth in the said first schedule,

In a case of testacy, add, if the decree or order is so qualified: and what is by the said testator specifically bequeathed,

the said testator [*Or,* intestate] was not, to the best of my knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, on any account whatsoever (*Continue as in par.* 2 *of* No. 1291, *ante, to the end of par.* 3: *substituting* "intestate's," *for* "testator's," *where applicable*).

4. I have, in the account marked A., now produced and shown to me (*l*), according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of the personal estate,

In a case of testacy, add: of the said testator; *and, if the decree or order is so qualified, add also:* not by him specifically bequeathed,

In a case of intestacy, add: of the said intestate,

which has come to my hands, or to the hands of any person or persons by my order, or for my use (*m*); with the times when, the names of the persons from whom, and on what account the same has been received; and also a like account of the disbursements, allowances, and payments, made by me in respect of, or on account of, the said testator's [*Or,* intestate's] funeral expenses, debts, and personal estate: together with the times when, the names of the

(*k*) See notes to No. 1291, *ante.* This and the next Form can be readily combined, where the executor has also to account as trustee of the real estate.

(*l*) For form of this account, see *ante,* No. 1292.

(*m*) This should accord with the decree or order directing the account to be taken.

persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use (*n*), possessed, received, or got in any part of the said testator's [*Or*, intestate's] personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

6. To the best of my knowledge, information, and belief, the personal estate of the said testator [*Or*, intestate] now outstanding, or undisposed of, consists of the particulars set forth in the second schedule hereunder written (*o*).

7. Save what is set forth in the said second schedule, there is not, to my knowledge, information, or belief, any part of the said testator's [*Or*, intestate's] personal estate now outstanding or undisposed of.

The first [*Or*, second] schedule above referred to.

(*The same as the first* [*Or, second*] *schedule to* No. 1291, *ante*.)

1296. Affidavit by a sole trustee of a testator's will, verifying his account of rents and profits, and answering the usual inquiries as to real estate (*p*).

Formal parts: see ante, No. 9.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written the particulars of all the real estate which G. H., the testator in the decree [*Or*, order] made in this cause, dated the —— day of ——, 187—, named or referred to, and who died on the —— day of ——, 187—, was seised of, or entitled to (*Continue as in par.* 8 *of* No. 1291, *ante, to the end of that par.*).

2. Save what is set forth in the said schedule, the said testator was not, to the best of my knowledge, information, or belief, at the date of his will, or at the time of his death [*or as may be directed*], seised of, or entitled to, any real estate in possession remainder, or reversion, absolutely or contingently, or otherwise howsoever.

3. I have, according to the best of my knowledge, information, and belief, set forth in the second schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

Or, if there is no such incumbrance, say: 3. To the best of my knowledge, information, and belief, there is not any in-

(*n*) This should accord with the decree or order directing the account to be taken.

(*o*) As to this schedule, see *ante*, No. 1291, n. (*r*).

(*p*) See *ante*, No. 1295, n. (*k*).

cumbrance affecting the said testator's real estate, or any part or parts thereof.

4. I have, in the account marked A., now produced and shown to me (*q*), according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate which have come to my hands, or to the hands of any person or persons by my order, or for my use (*r*); and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments, made by me in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say that, save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use (*r*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The first [*Or*, second] schedule above referred to.

(*The same as the third* [*Or*, *fourth*] *schedule to* No. 1291, *ante*.)

1297.

Affidavit by joint executors and trustees, of non-receipt of (further) personal estate, or rents and profits (*s*).

(*Title—and names, &c., of the deponents: as in* No. 1291, *ante*.)

1. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, say, that we have not, nor has any or either of us, nor have nor has any other persons or person by our, or any or either of our order, or for our or any or either of our use (*r*),

If so: since the —— day of ——, 187—, the time to which our accounts thereof, marked respectively A. and B., verified by our affidavit filed in this cause the —— day of ——, 187—, were made up and rendered,

possessed, received, or got in, any part of the personal estate of G. H., the testator in the decree [*Or*, order] made in this cause, dated the —— day of ——, 187—, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

(*q*) For form of this account, see *ante*, No. 1293.

(*r*) This should accord with the decree or order directing the account to be taken.

(*s*) See Dan. Pr. 1121.

1298.

Affidavit by a sole executor (or administrator) and trustee, of non-receipt of (further) personal estate, or rents and profits (*t*).

Formal parts: see ante, No. 9.

1. I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say, that I have not, nor have nor has any other persons or person by my order, or for my use (*u*),

If so: since the —— day of ——, 187—, the time to which my accounts thereof marked respectively A. and B., verified by my affidavit filed in this cause the —— day of ——, 187—, were made up and rendered,

possessed, received, or got in, any part of the personal estate of G. H., the testator [*Or*, intestate] in the decree [*Or*, order] made in this cause, dated the —— day of ——, 187—, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

1299.

Negative affidavit by the executor of a deceased executor, as to the personal estate of the original testator (*x*).

Formal parts: see ante, No. 9.

1. I believe that T. R., the testator in the decree in this cause dated the —— day of ——, 187—, named, was at the time of his death possessed of some personal estate, including certain household furniture, but I cannot, as to my knowledge, information, or belief, say what were the particulars or value thereof, save and except that it appears by the probate act that the amount of the personal estate of the said testator was sworn to be under the value of £——. Save and except as aforesaid, I cannot as to my knowledge, remembrance, information or belief, set forth a full true and particular, or any, account or inventory of the personal estate which the said testator T. R. was possessed of, or entitled to, at the time of his death.

2. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say, that, save as aforesaid, the said T. R. was not, at the time of his death, possessed of, or entitled to, any debt or sum of money due to him from me, or from R. S., deceased, in the said decree named, the executor of the said testator T. R., on any account whatsoever; nor to any leasehold or other personal estate, goods, chattels, or effects, in possession or reversion, absolutely or contingently, or otherwise howsoever.

3. I cannot, as to my knowledge, information, or belief, set forth a true and particular, or any, account of the personal estate of the said testator T. R., which came to the hands of the said R. S., or to the hands of any person or persons by his order, or for his use; or a like or any account of the disbursements, allowances, or

(*t*) See Dan. Pr. 1121.

(*u*) This should accord with the order directing the account to be taken.

(*x*) As to the representatives of a deceased executor, and the remedies against them, see Dan. Pr. 222; Williams' Exors. 1966, 1967. For forms of decrees in like case, see Seton, 735, 736, 744; and see *ib.* 737, 765.

payments made by the said R. S., in respect of the funeral expenses, debts, or personal estate of the said testator T. R.

4. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say, that no part of the personal estate of the said testator T. R. has come to my hands, or to the hands of any other person or persons by my order, or for my use.

5. There is not to my knowledge, information, or belief, any part of the personal estate of the said testator T. R., now outstanding or undisposed of.

1300.

Notice of having left accounts, and filed affidavit (*y*).

Formal parts: see ante, No. 54.

Take notice, that I have this day left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——] the accounts of the defendant A. B. [*or as may be*], in answer to the directions numbered 1, 2, *&c.*, in the decree [*Or*, order] dated ——, 187—, and filed an affidavit of the said defendant [*or as may be*] verifying the said accounts, and answering the inquiries numbered 6, 7, *&c.*, in the said decree [*Or*, order].

1301.

Surcharge against an accounting party (*z*).

In Chancery.

(*Short title of the cause, and reference to the record.*)

The surcharge of the plaintiff [*or as may be*] against the defendant A. B. [*or as may be*], under the account numbered ——, in the decree [*Or*, order] in this cause, dated the —— day of ——, 187—.

The plaintiff [*or as may be*] seeks to charge the defendant A. B. [*or as may be*] with the several sums of money hereinafter particularised, beyond what the defendant A. B. [*or as may be*] has, by his account marked A. left at the chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], on the —— day of ——, 187—, pursuant to the said decree [*Or*, order], admitted to have been received by him; that is to say:

(*Set out particulars of the surcharge, in a short and succinct manner; as thus:*)

No. of item.	Date when received.	Names of persons from whom received.	Particulars of amount received.	Amount received.
				£ *s.* *d.*
73	1869, Jan. 4	John Thomas . .	Half year's rent of Bolder Farm, due Michaelmas, 1868 .	30 1 9

(*y*) See Dan. Pr. 1126; Ord. XXXV. 27.

(*z*) For the practice as to surcharging, see Dan. Pr. 1127; Ord. XXXV. 34. As

1302.

Notice thereof (*a*).

Formal parts: see ante, No. 54.

Take notice, that I have this day left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——] a statement of several sums of money therein and hereinafter particularised, with which the plaintiff [*or as may be*] seeks to charge the defendant A. B. [*or as may be*], beyond what the said defendant [*or as may be*] has, by his account marked A. left at the said Chambers on the —— day of ——, 187—, admitted to have received; that is to say:

(*Set out particulars: as in the surcharge.*)

And take notice, that I have this day filed an affidavit of the plaintiff [*or as may be*] in support of such statement; and that the Chief Clerk has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, at the said Chambers, to proceed upon the said statement.

1303.

Summons, for special directions as to the mode of taking or vouching an account (*b*).

Formal parts: see ante, No. 60.

on the part of the defendant [*or as may be*], that in taking the account Nod. — directed by the decree [*Or*, order] dated the ——, 187— (*Describe the directions required; as thus:*

the book of account marked A., referred to in the affidavit of L. B. filed the ——, 187—: being the book in which the said L. B. kept an account of his disbursements in respect of the estate of T. H. B., the testator in this cause:)

may be taken as *primâ facie* evidence of the truth of the payments referred to in the said affidavit [*or as may be*]: with liberty for any of the parties interested therein to take such objections thereto as they may be advised (*c*).

1304.

Request, that Taxing Master in Chancery will moderate bill of costs claimed at Chambers (*d*).

Formal parts: see ante, No. 1263.

The proper Taxing Master is requested to tax and settle the accompanying bill of costs, identified by my initials thereon:

to cross-examining the accounting party, see Dan. Pr. 1127; and as to production of documents by him, see *ib.*

(*a*) See Dan. Pr. 1127; Ord. XXXV. 34.

(*b*) See Dan. Pr. 1130—1132; 15 & 16 Vic. c. 86, s. 54. For the mode of vouching accounts at Chambers, see Dan. Pr. 1127—1132. As to settled accounts, see *ib.* 575, *et seq.*, 1136. As to surcharging and falsifying, see *ib.* 1137; and for forms of orders, see Seton, 108, 111. As to computing interest on a stated account, and on balances where rests directed, and as to striking a balance, see Dan. Pr. 1136, 1137. As to the form of the Chief Clerk's certificate of the result of the account, and as to transcripts of altered accounts, see *ib.*; Ord. XXXV. 46; and *post*, No. 1511.

(*c*) For orders in like case, see *Godfray* v. *Brooke*, V. C. W. at Chambers, 27 June, 1865, Reg. Lib. A. 1275; *Clark* v. *Clark*, M. R. at Chambers, 14 Nov. 1866, Reg. Lib. A. 2514; *O'Toole* v. *Brown*, M. R., at Chambers, 2 Mar. 1868, Reg. Lib. B. 496.

(*d*) See Dan. Pr. 1108, 1135, 1309, 1314; *ib.* nn. (*b*), (*d*); 1315, n. (*e*); 6 & 7 Vic.

which is claimed against the estate of A. B., the testator [*or as may be*] in this cause, under the decree [*Or*, order] therein dated the —— day of ——, 187—.

Or, to assist in making a proper allowance in respect thereof in taking the accounts of the defendant [*or as may be*], the executor [*or as may be*] of A. B., the testator (*&c.: as above*): in which accounts the said bill of costs is claimed as a payment by the said defendant [*or as may be*] to his solicitor.

1304a. Another form of such request (*e*).

Formal parts: see ante, No. 1263.

The amount of the accompanying bill of costs, signed with my initials, is claimed in the accounts of the defendant C. D., the executor [*or as may be: see ante*, No. 1304], as a payment made by him as such executor [*or as may be*] to his solicitor. The proper Taxing Master is requested to peruse such bill, and state whether the items are fair and proper: in order to assist the Judge in making a proper allowance in respect thereof.

1305. Request, that Taxing Officer of another Court will tax a bill of costs claimed in Chancery (*f*).

Formal parts: see ante, No. 1263.

The Master of the Rolls [*Or*, Vice-Chancellor ——, *or as may be*] requests the Taxing Officer of the House of Lords [*Or*, one of the Masters of the Court of Queen's Bench—*or other Officer to whom the bill is to be sent*] to tax the within bill of costs (*g*); and to report to him the amount at which he has allowed the same.

1306. Admission of assets by, or on behalf of, an executor or administrator (*h*).

(*Title of cause, and reference to the record.*)

I, (the defendant) A. B., the executor of the will [*Or*, administrator of the estate and effects] of C. D., the testator [*Or*, intestate] in this cause,

Or, I, E. F., as solicitor of, and for and on behalf of, A. B., the executor (*&c.: as above*),

do hereby admit assets of the said testator [*Or*, intestate] for the purposes of this suit.

Or, for payment of all his debts and the costs of this suit.

Or, for payment of the legacy given by his will to G. H.—*or as may be.*

Dated this —— day of ——, 187—.

A. B. [*Or*, E. F.].

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c. 73, s. 42; Ord. XL. 24, 25. As to the costs to be allowed, and other just allowances to be made, in taking the account of an executor, &c., see Dan. Pr. 1132—1136; Seton, 767—770; Lewin, 787; Williams' Exors. 1939; Ord. XXIII. 16.

(*e*) See *ante*, No. 1304, n. (*d*). This form has been adopted at the Master of the Rolls' Chambers, since the case of *Allen* v. *Jarvis*, Law Rep. 4 Ch. 616, L.JJ.

(*f*) See Dan. Pr. 1135, n. (*z*); 1314, n. (*b*); 1315, n. (*e*).

(*g*) The request is usually indorsed on the bill itself. Where the bill is to be taxed as between attorney and client, or on other special terms, the request should be enlarged accordingly.

(*h*) See Dan. Pr. 1070. As to an admission of assets, and the effect thereof, see Williams' Exors. 1893—1895.

1307. Summons for transfer of stock, and payment of cash, into Court (*i*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that he may be at liberty

Or, that the defendant A. B. [*or as may be*] may be ordered, on or before the —— day of ——, 187—, or subsequently within seven days after service,

to transfer into the name of the Accountant General in trust in this cause (*Describe the short title, and account, if any; as thus:* Jones *v.* Smith (1870, J. No. 15), "The personal estate account"), the sum of £—— Bank £3 per cent. annuities [*or as may be*], and to pay into the bank, to the credit of this cause, the like title and account, the sum of £——, cash, respectively appearing by his answer [*Or*, affidavit] filed in this cause on the —— day of ——, 187—, [*Or*, admitted by him] to be standing in his name in the books of the Bank of England, and in his hands, and to be parts of the personal estate of C. D., the testator [*Or*, intestate] in this cause [*or as may be*]; and that the said £—— cash, and the interest to accrue from time to time on the said annuities [*or as may be*], may be laid out in like annuities, and accumulated.

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13. *Foreclosure and Redemption Suits* (*l*).

1308. Affidavit by a mortgagee not in possession, of amount due to him, under a decree in a foreclosure or redemption suit (*k*).

Formal parts: see ante, No. 9.

1. There is due to me upon and by virtue of my mortgage security dated the —— day of ——, 187—, in the decree made in this cause dated the —— day of ——, 187—, mentioned,

(*i*) See Dan. Pr. 1137. For the mode of transferring stock, and paying cash into Court, see *ib.* Chap. XL.; and see *post*, Chap. XL.

(*k*) Dan. Pr. 858, 1138.

(*l*) For the law respecting mortgages, see Fisher, *passim;* 2 Davidson's Conv. 547—856; 2 L. C. Eq. 951—978, 1043—1047; 1 Prideaux's Conv. 389—469; Seton, 364—484; Smith's Comp. 373—419; 2 Spence, Eq. Jur. 613—847; Trower, 389—390; 17 & 18 Vic. c. 113; 23 & 24 Vic. c. 145; 30 & 31 Vic. c. 69; Sugd. Stat. 300; and see 28 & 29 Vic. c. 78 (Mortgage Debenture Act, 1865), *post*, Chap. XLV. As to accounts generally, between mortgagor and mortgagee, see Fisher, 859—941; Seton, 371—373, 382—388, 399—401. As to accounts of interest, see Fisher, 900—941; Seton, 373—375; and as to accounts of costs, see Fisher, 942—977; Morgan & Davey, 155—172, 536; Seton, 376—382; Dan. Pr. 1248—1254. For form of notice of motion by a subsequent incumbrancer, to dismiss a foreclosure and redemption suit, with costs, as against his co-defendants, on payment of a security fund into Court, and for an inquiry as to the amount due to the plaintiff, see *ante*, No. 670; and by defendant, the mortgagor, in a foreclosure suit, for the usual decree to be made under 7 Geo. II. c. 20, see *ante*, No. 869. For the common forms of decrees in foreclosure and

[*or as may be* (*m*)], the sum of £A. for principal money, and the sum of £B. for interest (less property tax) thereon, computed at the rate of £C. per cent. per annum, from the —— day of ——, 187—, to the —— day of ——, 187—: making together the sum of £D.: exclusive of my costs of this suit [*or as may be*].

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor has nor have any other person or persons by my order, or for my use, received any sum or sums of money for or on account of the hereditaments comprised in my said mortgage security, or any part thereof; nor any security or satisfaction whatsoever for the said principal money, and interest respectively, or any part or parts thereof: save and except the said mortgage security [*or as may be*].

1309.

Chief Clerk's certificate of amount due to a mortgagee not in possession (*n*).

Formal parts: see post, No. 1511.

1. There is due to the plaintiff [*or as may be*], upon and by virtue of his mortgage security in the decree dated the —— day of ——, 187—, mentioned, the sum of £A. for principal money, and the sum of £B. for interest (less property tax) thereon, at the rate of £C. per cent. per annum, from the —— day of ——, 187—, to the date of this certificate. The said sums of £A. and £B., added to the sum of £D., certified by the Taxing Master to be the amount of the costs of the said plaintiff [*or as may be*] of this suit, make together the sum of £E.

2. There will also be due to the plaintiff [*or as may be*] on the —— day of ——, 187—, being the expiration of six calendar (*o*) months from the date of this certificate, the sum of £F. for half a year's interest (less property tax), at the rate aforesaid, on the said sum of £A. to the said —— day of ——, 187—. The said sums of £E. and £F. make together the sum of £G.

(Monday), the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls in the Rolls' Yard, Chancery Lane, London, are appointed as the time and place at which the defendant C. D. is to pay the said sum of £G. to the plaintiff A. B. [*or as may be*].

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redemption suits, see Seton, 364, No. 1; 461, No. 1; and Dan. Pr. 858; and for a variety of forms of decrees and orders for accounts and inquiries in mortgage suits, see Seton, xx.—xxiii., 364—484; Fisher, 1044—1061. For order of foreclosure absolute at the first hearing, on disclaimer of one defendant, and consent of the other, see *Giles* v. *Jones,* V. C. S., 28 July, 1866, Reg. Lib. A. 1921. As to the jurisdiction of the County Courts under 28 & 29 Vic. c. 99, see Dan. Pr. 1138, n. (*b*); and see *post,* Chap. XLV.

(*m*) The affidavit should accord with the words of the decree or order directing the account.

(*n*) See Dan. Pr. 858, 1139.

(*o*) *Ibid.* 858, n. (*l*).

1310.
Affidavit by a mortgagee in possession, verifying his account of principal and interest, repairs, and rents, without rests (*p*).

Formal parts: see ante, No. 9.

1. I have, in the account marked A. now produced and shown to me (*q*), according to the best of my knowledge, information, and belief set forth an account of the several matters hereinafter mentioned, which are inquired after by the decree made in this cause, dated the —— day of ——, 187—.

2. I have, in the first part of the said account marked A., set forth a full, true, and particular account of all sums of money which have become due to me for principal money and interest upon and by virtue of my mortgage security dated the —— day of ——, 187—, in the said decree mentioned.

3. I have, in the second part of the said account, set forth a full, true, and particular account of all sums of money paid, laid out, and expended by me in necessary repairs and lasting improvements on the hereditaments comprised in my said mortgage security, and the times when, the names of the persons to whom, and the purposes for which the same were made.

4. I have, in the third part of the said account, set forth a full, true, and particular account of all the rents and profits of the said mortgaged hereditaments which have come to my hands, or to the hands of any person or persons by my order, or for my use; and the times when, the names of the persons from whom, on what account, and in respect of what part of the said hereditaments the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by me in respect of the said hereditaments, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that save and except as appears in the said account marked A., I have not, nor has nor have any other person or persons by my order or for my use, received or got in any rents and profits of the said hereditaments, nor any money in respect thereof, or of the principal and interest due to me on my mortgage security as aforesaid; and that the said account does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated; and that I have not, nor has nor have any other person or persons by my order, or for my use, received any security or satisfaction whatsoever for the amount due to me on balance of the said account, or any part thereof, save and except the said mortgage security [*or as may be*].

(*p*) See Dan. Pr. 858, 1139; and notes to No. 1308, *ante*. For forms of decrees in like case, see Seton, 367, No. 7; 461, No. 1; Dan. Pr. 858. As to taking the account with rests, see Seton, 399—401; Fisher, 894—899. For forms of decrees in such case, see Seton, 397, No. 7; 467, No. 1; 469, No. 3.

(*q*) For form of account, see *post*, No. 1311.

1311.
Account (A), referred to in No. 1310 (*r*).

In Chancery.

A.

(*Short title of the cause, and reference to the record*). This account marked A. was produced and shown to the plaintiff A. B. [*or as may be*], and is the account referred to in his affidavit sworn this —— day of ——187—, before me (*&c.: see ante*, No. 12).

FIRST PART.—PRINCIPAL AND INTEREST DUE.

1866, August 8. Amount of principal advanced this day	(A)	2000	0	0
1870, August 8. Four years' interest thereon at £5 per cent., less property tax .	(B)	393	6	8
Total of first part		£2,393	6	8

SECOND PART.—EXPENDITURE IN REPAIRS AND LASTING IMPROVEMENTS.

No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed. £	s.	d.	Interest thereon at £5 per cent., computed to 8 August, 1870. £	s.	d.
1	1869. Nov. 4. .	Thomas Carpenter . .	New barn at farm occupied by John James . . .	190	3	11			
			Interest . .	—	—	—	9	1	2
2	1870. March 3 .	William Styles	Rebuilding part of house let to Reuben Marshall . . .	140	13	6			
			Interest . .	—	—	—	2	15	0
			Total laid out in repairs, &c. . . (F) £	330	17	5	11	16	2
			Add Interest . . (G)	11	16	2			
			Total of Second Part . . (H) £	342	13	7			

(*r*) See *ante*, No. 1310, n. (*q*). The letters A. B. F. G. H. K. L. and M. used in this form correspond to the like letters used in Nos. 1309, par. 1, and 1312.

THIRD PART.—RENTS AND PROFITS.

Receipts.						Disbursements.				
No. of item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received.	No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				£ s. d.					£ s. d.
1	1868. Nov. 11.	John James .	Half year's rent of farm in parish of Ickleton, due Michaelmas last, less income tax .	296 5 0	1	1869. Jan. 1.	Isaac Thompson	One year's rent charge, due Christmas last . . .	15 0 0
					2	,, 16.	James Francis .	Land Tax, due ditto . . .	6 3 9
2	,, 25.	Thomas Jones	One quarter's rent of house at Chesterford, due same time .	10 0 0	3	1870. Jan. 5.	Isaac Thompson	Same as No. 1, due Christmas last . .	15 0 0
3	1869. May 1.	John James . .	Same as No. 1, due Lady Day last . .	296 5 0				(L) £	36 3 9
4	June 3.	Thomas Jones	Same as No. 2, due Lady Day last . .	10 0 0				Balance (M). .	576 6 3
			(K) £	612 10 0				£	612 10 0

1312. Chief Clerk's certificate of the result of the account (*s*).

Proceed as in No. 1309, *ante, to the end of par.* 1.

2. The plaintiff [*or as may be*] has laid out sums to the amount of £F., in necessary repairs and lasting improvements on the hereditaments comprised in his said mortgage security. Interest has been computed on the said sums, from the respective times when the same were so laid out to the date of this certificate, and at the rate of £C. per cent. per annum, being the same rate of interest as the said mortgage carries, and such interest (less property tax) amounts to £G. The said sums of £F. and £G. make together the sum of £H. The particulars of the sums so laid out appear in the second part of the account marked A., verified by the affidavit of the plaintiff [*or as may be*] filed ——, 187—, and which account is to be filed with this certificate [*Or if the account has been varied, explain in what respect*].

The evidence produced, *&c.*

The said sums of £E. and £H. make together the sum of £I.

3. The plaintiff [*or as may be*] has received rents and profits of the mortgaged hereditaments to the amount of £K. ; and he has paid, or is entitled to be allowed, on account thereof sums to the

(*s*) See Dan. Pr. 858, 1139.

amount of £L.: leaving a balance due from him of £M. on that account. The particulars of such receipts and payments appear in the third part of the said account marked A. [*Explain any variations*].

The evidence produced, *&c.*

The said sum of £M. being deducted from the said £I. leaves a balance due to the plaintiff [*or as may be*] of £N.

There will also be due to the plaintiff [*or as may be*] on the —— day of ——, 187—: being the expiration of six calendar months (*t*) from the date of this certificate: the further sum of £O., for half a year's interest (less property tax), at the rate aforesaid, to the said —— day of ——, 187—, on the sum of £P., part of the said sum of £N. [*or as may be*]: which sums make together the sum of £Q.

(Monday), the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls in the Rolls' Yard, Chancery Lane, London, are appointed as the time and place at which the defendant C. D. is to pay the said sum of £Q. to the plaintiff A. B. [*or as may be*].

1313.

Notice of motion, or summons, to enlarge time for payment, in a foreclosure suit (*u*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the defendant A.B.:

1. That, upon payment by him to the plaintiff of the plaintiff's costs of this application: to be taxed: and upon payment by him to the plaintiff, on or before the —— day of ——, 187—, of the sums of £—— and £——, by the Chief Clerk's certificate dated the ——, 187—, certified to be due to the plaintiff for interest in respect of his mortgage security therein mentioned, and for his costs of this suit, the time for the defendant to redeem the hereditaments comprised in the said mortgage may be enlarged for six calendar months.

2. That upon the aforesaid payments being made, subsequent interest may be computed on the principal money due to the plaintiff on his said security, and his subsequent costs of this suit be taxed;

If so: and the account of rents directed by the decree dated —— the —— day of ——, 187—, be continued, and the balance dealt with in the manner therein mentioned;

and the amount due to the plaintiff certified; and a new time and place appointed for the payment thereof to him by the defendant.

3. That in default of such payment, the defendant may be foreclosed.

(*t*) See Dan. Pr. 858, n. (*l*).

(*u*) *Ibid.* 860, 1139. For order in like case, see Seton, 390, No. 1.

1314.
Notice of motion, or summons, by the mortgagee, for a new time to be fixed, where he failed to attend at the time appointed for payment (*x*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff:

1. That the time for the defendant to redeem the hereditaments in the decree dated the —— day of ——, 187—, and Chief Clerk's certificate dated the —— day of ——, 187—, respectively mentioned, may be enlarged until the —— day of ——, 187—.

2. That the said —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, may be appointed as the time and place at which the defendant is to pay to the plaintiff the sum of £——, in the said Chief Clerk's certificate mentioned.

1315.
Notice of motion, or summons, to continue the account, where the mortgagee has received rents between the certificate and the time appointed for payment (*y*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff:

1. That subsequent interest may be computed on the principal money due to the plaintiff on his mortgage security in the decree dated the —— day of ——, 187—, and Chief Clerk's certificate dated the —— day of ——, 187—, respectively mentioned; and that his subsequent costs of this suit may be taxed.

2. That the account of rents directed to be taken by the said decree may be continued, and the balance dealt with in the manner in the said decree mentioned.

3. That the amount due to the plaintiff for principal, interest, and costs may be certified.

4. That in lieu of the time and amount mentioned in the said Chief Clerk's certificate, a new time may be appointed for the defendant to attend at the Chapel of the Rolls, and pay to the plaintiff the amount which shall be so certified to be due to him.

1316.
Power of attorney, to attend and receive money certified to be due to a mortgagee (*z*).

In Chancery.

(*Title of the cause, and reference to the record.*)

I, A. B., of (*residence and addition*), the above named plaintiff [*or as may be*], hereby appoint E. F., of (*residence and addition*), and G. H., of, *&c.*, jointly and severally, my attornies, and attorney, to attend on the —— day of ——, 187—(*Day fixed for payment*), at the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, and then and there, in my name, and on my behalf, to receive from the above named defendant C. D. [*or as may be*], the sum of £——, in the Chief Clerk's certificate made in this cause dated the —— day of ——, 187—, mentioned, and appearing thereby to be payable to me at the time and place aforesaid. And on receipt of the said sum, for me, and

(*x*) See Dan. Pr. 859. For order in like case, see Seton, 391, No. 2.

(*y*) See Dan. Pr. 860, 1139; and see *Pearce* v. *Spencer*, M. R. at Chambers, 30 July, 1862, Reg. Lib. B. 1646.

(*z*) See Dan. Pr. 858.

in my name, or in the names or name of my said attornies or attorney, to give, sign, seal and deliver a valid release and discharge for the same, and a reconveyance of the hereditaments comprised in my mortgage security in the said Chief Clerk's certificate mentioned: free and clear of and from all incumbrances done by me, or any person claiming by, from, or under me (*a*). And I hereby agree to ratify and confirm whatsoever my said attornies or attorney shall lawfully do, or cause to be done, in or about the premises, by virtue hereof. In witness whereof I have hereunto set my hand and seal this —— day of ——, 187—.

A. B. (Seal).

Signed, sealed, and delivered by the above named A. B. in the presence of,
L. M., of (*residence and addition*).

1317.

Motion paper, for final order in a foreclosure, or redemption, suit, on default in payment (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*Or*, defendant],

In a foreclosure suit, add:

for a final order of foreclosure against the defendant:

In a redemption suit, add:

that the plaintiff's bill may stand dismissed with costs:

the defendant [*Or*, plaintiff] having made default in payment of the redemption money mentioned in the Chief Clerk's certificate dated the —— day of ——, 187—.

The decree, and Chief Clerk's certificate, and an affidavit of default, accompany.

1318.

Affidavit in support, where the mortgagee attended in person (*c*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I personally attended and waited at the Chapel of the Rolls (*d*), in the Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of that day (*e*): being the place and time appointed by the Chief

(*a*) Follow the words of the decree.

(*b*) See Dan. Pr. 858, 1139. For order in like case, see *Kidder* v. *Proudfoot*, V. C. K., 22 May, 1866, Reg. Lib. A. 1055; and see Seton, 393. For order dismissing plaintiff's bill, on default in payment of redemption money, see Seton, 466. As to the course where the decree directs a sale, instead of a foreclosure, on default, see Dan. Pr. 1139, 1148—1187; 15 & 16 Vic. c. 86, s. 48.

(*c*) See Dan. Pr. 858.

(*d*) The attendance takes place in the vestry room, on the south side of the chapel. A fee of 5*s*. is payable on an attendance to receive mortgage money, and a fee of 10*s*. 6*d*. on payment of mortgage money: see 28th Report of Deputy Keeper of the Public Records (1867), App. p. 2.

(*e*) As to the effect of a partial attendance only, during the hour, see Dan. Pr. 859; Fisher, 1035.

Clerk's certificate made in this cause, and dated the —— day of ——, 187—: for the purpose of receiving from the above named defendant C. D. [*or as may be*], the sum of £——, in the said Chief Clerk's certificate mentioned.

2. The defendant C. D. did not, nor did any person or persons on his account or behalf, attend at the place and time aforesaid, to pay me the said sum of £——, or any part thereof (*f*).

3. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor has nor have any other person or persons by my order, or for my use, received the said sum of £——, or any part thereof; but that the whole of the said sum still remains due and owing to me.

1319. Affidavit in support, where the mortgagee attended by attorney (*g*).

In Chancery.

(*Title of the cause, and reference to the record.*)

We, A. B., of (*residence and addition*), the above named plaintiff [*or as may be*], and E. F., of (*&c. : as in the power*), severally make oath and say:

First, I the said A. B. for myself say as follows:

1. The signature "——" to the paper writing marked A., now produced and shown to me (*h*), and purporting to be a power of attorney dated the —— day of ——, 187—, from me to the deponent E. F., and to G. H., is of my proper handwriting. The said paper writing was executed by me on the —— day of ——, 187—.

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say, that I have not, nor has nor have any other person or persons by my order, or for my

(*f*) At the expiration of the time appointed, the person attending makes and signs, in a book kept for the purpose in the vestry room of the chapel, an entry, to the following effect: (*Date, and title of the cause*). I, A. B., of (*residence and addition*), the above named plaintiff [*Or*, I, E. F., of (*residence and addition*), by virtue of a power of attorney from the above named plaintiff], do hereby certify, that I attended at the Chapel of the Rolls, Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of (Monday), the —— day of ——, 187—: being the time and place appointed by the Chief Clerk's certificate dated the —— day of ——, 187—, made in this cause, in pursuance of the decree [*Or*, order] of the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—: for the purpose of receiving the sum of £—— from the above named defendant C. D.; but the said defendant did not, nor did any person or persons on his behalf, attend to pay the same, or any part thereof. Dated this —— day of ——, 187—.

(*Signature.*)

(*g*) See Dan. Pr. 858; and notes No. 1318, *ante*.

(*h*) Exhibit the power. For form of memorandum of exhibit, see *ante*, No. 43.

use, received the sum of £——, in the Chief Clerk's certificate made in this cause, and dated the —— day of ——, 187—, mentioned, and thereby appointed to be paid to me by the above named defendant C. D. [*or as may be*] on the ——day of ——, 187—, or any part thereof; but that the whole of the said sum of £——, remains due to me.

And I the said E. F. for myself say as follows:

3. Under the authority contained in the paper writing marked A. now produced and shown to me (*i*), and being the power of attorney hereinbefore mentioned, I, as the attorney of the said plaintiff [*or as may be*], did on the —— day of ——, 187—, personally attend and wait at the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of that day: being the place and time appointed by the said Chief Clerk's certificate, dated the —— day of ——, 187—, for the purpose of receiving from the above named defendant C. D. [*or as may be*], the sum of £——, in the said paper writing marked A., and Chief Clerk's certificate, respectively mentioned; and that the defendant C. D. did not, nor did any person or persons on his behalf, attend at the place and time aforesaid to pay to the plaintiff A. B., or to me, as his attorney, the said sum of £——, or any part thereof; and I did not in fact then receive, and have not since received, the said sum of £——, or any part thereof.

14. *Partnership Suits* (*k*).

1320. Affidavit by an accountant, of the result of his investigation of partnership accounts (*l*).

Formal parts: see ante, No. 9.

1. In consequence of instructions received by me from Messrs. A. and B., the solicitors in this cause for the plaintiff [*or as may be*], I have carefully examined all the books and accounts of the plaintiff and defendant as copartners in the business or trade of cotton spinners and manufacturers at R., in the county of L., from the —— day of ——, 187—, when the said partnership commenced, until the —— day of ——, 187—, when the said partnership was dissolved.

(*i*) Exhibit the power. For form of memorandum of exhibit, see *ante*, No. 43.

(*k*) For the law respecting private partnerships, and the practice in suits relating thereto, see Dan. Pr. 1139; Add. Cont. 632—664; L. C. Merc. 334—386, 995—998—1009; Lindley on Part. vii.—xxi.; Seton, 542—561; and for various forms of decrees and orders in such suits, see Seton, 540—561. As to the jurisdiction of the County Courts, under 28 & 29 Vic. c. 99, see Dan. Pr. 1140, n. (*l*).

(*l*) As to partnership accounts, and the employment of accountants to make out the same, see Dan. Pr. 1121, n. (*c*), 1140. As to obtaining scientific assistance at Chambers, see *ib.* 846, 1048; and for forms of letter of instructions, and affidavit verifying report, in like case, see *ante*, Nos. 1189, 1190.

2. I have, in the book marked A., now produced and shown to me (*m*), set out the particulars and results of my investigation aforesaid, and the accounts of all the dealings and transactions between the plaintiff and the defendant in the said business of cotton spinners and manufacturers directed to be taken by the decree in this cause, dated the —— day of ——, 187—.

3. To the best of my knowledge, information, and belief, the said book marked A. contains a true and accurate account of all the said dealings and transactions, and of the result of my said investigation of the said partnership books and accounts.

1321.
Chief Clerk's certificate of the result of partnership accounts (*n*).

Formal parts: see post, No. 1511.

I have taken an account of the partnership dealings and transactions between the plaintiff and the defendant, from the 12th March, 1855 : having regard to the partnership articles, and the agreement of dissolution, in the pleadings mentioned.

On such account there was due from the said partnership to the plaintiff, on the 25th December, 1862, being the date of the dissolution of the said partnership, the sum of £A. in respect of his capital in the said partnership ; and which sum of £A. is still due to the plaintiff, together with £B. for interest thereon at the rate of £5 per cent. per annum from the last mentioned day to the date of this certificate : making together £C.

On the same account there was due from the said partnership to the defendant on the said 25th December, 1862, the sum of £D. in respect of his capital in the said partnership ; and the account of the defendant has been debited with £E. in respect of the trade stock of the partnership, and the horses, carts, trucks, and other plant and fixtures belonging to the said partnership, taken by him pursuant to the said agreement of dissolution : whereby the said £D. has been reduced to £F. : which sum of £F. is still due to the defendant, together with £G. for interest thereon at the rate aforesaid from the said 25th December, 1862, to the date of this certificate : making together £H.

The defendant has, since the dissolution of the said partnership, received in respect of the assets of the said partnership, other than the said £E. with which his account has been debited as aforesaid, sums to the amount of £I. ; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of £K. : leaving a balance due from him of £L. on that account.

The particulars of the above receipts and payments appear in the " Realisation Account," at page 2 of the account, marked A., verified by the affidavit of the defendant filed the 5th May, 1865 ; and which account is to be filed with this certificate : except, that

(*m*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*n*) Adapted from the certificate in *Wood* v. *Scoles*, Law Rep. 1 Ch. 369, 374; and see Dan. Pr. 1140.

in addition to the sums appearing in such account to have been realised by the defendant, he has been charged with £M. received by him of A. B., in respect of the assets of the said partnership since the said 5th May, 1865; and except that I have not allowed the defendant the sum of £N. retained by him on the 28th February, 1865, on account of his capital in the said partnership: reserving to the Court the application of the partnership assets realised by the defendant since the dissolution of the said partnership; and except that I have deducted from the item of £O on the debit side of the said "Realisation Account" the sum of £P.: whereby the said item is reduced to £Q.; and except that, in addition to the disbursements appearing in the said "Realisation Account," the defendant has been allowed £R. paid by him into the bank, with the privity of the Accountant-General, to the credit of this cause, on the 28th February, 1865, pursuant to the said decree.

Notwithstanding the foregoing certificate of the result of the said account, the question whether the account of the defendant ought to have been debited with the said £E. is, at the request of the plaintiff, reserved for the consideration of the Court.

The assets of the said partnership now remaining outstanding or undisposed of consist of the particulars set forth in the schedule hereto.

The evidence produced, *&c.*

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15. *Management of Property* (*o*).

1322.

Summons for leave to institute a suit, or bring an action (*p*).

Formal parts: see ante, No. 60.

on the part of the plaintiffs [*Or*, defendants, A. B. and C. D.: *or as may be*], the trustees [*Or*, executors] of the will of E. F., the testator

Or, the administrators of the estate and effects of E. F., the intestate

in the pleadings named [*or as may be*]:

1. That they may be at liberty to institute and prosecute a suit, *Or*, to commence and prosecute an action in one of the Superior Courts of Law at Westminster,

(*o*) See generally, Dan. Pr. 1040, 1140—1142; and as to infants, *ib.* 1204—1206. As to the effect of the suit on the exercise by trustees of discretionary powers, see *ib.* 1140; Lewin, 312, 330, 337, 425, 442; Hill on Trustees, 567; Haddan, 32. As to the duties of trustees and executors, in respect of outstanding property, see 2 L. C. Eq. 794—800, 1072, 1073; 2 Spence, Eq. Jur. 923, 924; and see 23 & 24 Vic. c. 145, s. 30. As to the jurisdiction of the County Courts, under 28 & 29 Vic. c. 99, see Dan. Pr. 1140, n. (*r*).

(*p*) See Dan. Pr. 1141. As to the proper person to have the conduct of the suit, see *Harrison* v. *Richards*, Law Rep. 1 Ch. 473: 12 Jur. N. S. 871, L. JJ.

Or, to take proceedings in the proper County Court—*or as may be*,

against all proper parties, for the purpose of (*State, shortly, the object; as thus:*

compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for £500

Or, recovering a debt of £500 due

from G. H., and now forming part of the outstanding estate of the said E. F.).

2. That the applicants may be indemnified, in such manner as the Judge shall direct, against any costs to be incurred by them in such suit [*Or*, action—*Or*, proceedings], out of the estate of the said E. F. (*q*).

1323.

Summons for leave to proceed with a suit against a public company, notwithstanding a winding-up order (*r*).

Title of the winding-up matter—and other formal parts: see ante, No. 60.

on the part of A. B., the plaintiff in a certain suit instituted in this Court against the above-named Company: the short title whereof is B. *v.* The —— Company (187—, B. No. ——): that he may be at liberty to proceed with the said suit, notwithstanding the order dated the —— day of ——, 187—, to wind up the said —— Company, under the provisions of the Companies Act, 1862.

1324.

Summons for leave to defend a suit in equity (*s*).

Commence as in No. 1322, *ante*.

1. That they may be at liberty to defend the suit commenced against them in this Court, by A. B. and C. D., the executors of L. M. [*or as may be*], for the purpose of (*State, shortly, what; as thus*:

compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for £500 to the said L. M.: the equity of redemption whereof forms part of the estate of the said E. F.);

and the short title of which suit is Brown *v.* Jones (1871, B. 90).

2. That the applicants may be indemnified (*Conclude as in* No. 1322, *ante*).

(*q*) See *Dawson* v. *Clark*, V. C. S. at Chambers, 12 Jan. 1864, Reg. Lib. A. 38.

(*r*) See the Companies Act, 1862 (25 & 26 Vic. c. 89), s. 87; Dan. Pr. 264. The application should be made by summons, not by notice of motion: *Hagell* v. *Currie*, W. N. (1867), 75, M. R.; and, *semble*, to the Judge who made the winding-up order: *Wilson* v. *Natal Investment Company*, W. N. (1867), 68, V. C. M.

(*s*) See Dan. Pr. 1141.

1325.

Summons for leave to defend an action, or other proceeding (*t*).

Commence as in No. 1322, *ante.*

1. That they may be at liberty to defend the action commenced against them by O. P., in Her Majesty's Court of Queen's Bench at Westminster,

Or, to defend the plaint taken out against them by O. P., in the County Court for Warwickshire, holden at Coventry—*or as may be*,

to recover the sum of £500 alleged to be due to him from the estate of the said E. F. [*or as may be*].

2. That the applicants may be indemnified (*Conclude as in* No. 1322, *ante*).

1326.

Summons for leave to convert outstanding estate (*u*).

Commence as in No. 1322, *ante.*

that they may be at liberty to sell the £5,000 Russian 5*l.* per cent. stock [*or as may be*], forming part of the outstanding estate of the said E. F.; and that the proceeds of such sale may be paid by the applicants, within ten days (exclusive of vacations) after the receipt thereof, into the bank, with the privity of the Accountant-General, to the credit of this cause, Brown *v.* Jones (1871, B. 90), "The personal estate account"; and be thereupon laid out in bank 3*l.* per cent. annuities; and that the interest to accrue on such annuities may be laid out in like annuities, and accumulated [*or as may be*].

1327.

Summons for leave to carry on testator's business (*v*).

Commence as in No. 1322, *ante.*

that the applicants may be at liberty to carry on the testator's business of a ——, at ——, until the sale thereof, or until the —— day of ——, next; and to use and employ for that purpose any part of the sum of £——, now in their hands, and forming part of the testator's personal estate.

1328.

Summons for leave to pay debts (*x*).

Commence as in No. 1322, *ante.*

that the applicants may be at liberty, out of the assets of the said E. F. in their hands, to pay the debts of the said E. F. specified in the schedule to the Chief Clerk's separate certificate dated the —— 187—.

Or, in the exhibit marked A. to the affidavit of the applicants filed ——, 187—, *or as may be.*

(*t*) See Dan. Pr. 1141. For order in like case, see *Dawson* v. *Clark*, V. C. S. at Chambers, 12 Jan. 1864, Reg. Lib. A. 38.

(*u*) See Dan. Pr. 1141. For various forms of orders relating to outstanding estate or securities, see Seton, 189—191.

(*v*) See Dan. Pr. 1141. For order in like case, see *Re Berry, Nicholson* v. *Norman*, M. R. at Chambers, 31 July, 1866, Reg. Lib. A. 2060.

(*x*) See Dan. Pr. 1141.

1329.
Summons for leave to compromise a suit, action, or claim (*y*).

Commence as in No. 1322, *ante.*
that the applicants may be at liberty to compromise the suit [*Or*, action] of "Brown *v.* Jones," instituted by [*Or*, against] them, in this Court,
Or, in Her Majesty's Court of Queen's Bench at Westminster *—or as may be,*
against [*Or*, by] (*State whom*), for (*State, shortly, the object of the suit, or action*),
Or, to compromise the debt due by [*Or*, to] G. H. to [*Or*, from] the estate of the said E. F.,
upon the terms following; namely: (*State them*).

1330.
Summons for leave to execute repairs, or drainage works (*z*).

Commence as in No. 1322, *ante.*
that the applicants may be at liberty to lay out sums of money not exceeding the respective sums set forth in the second column of the schedule hereto, in effecting the repairs [*Or*, works of drainage] and improvements specified in the affidavit of A. B., filed the ——, 187—, and in the exhibits thereto, to those portions of the estates of the testator E. F., situate at ——, in the county of ——, which are now in the occupation of the respective persons whose names are set forth in the first column of the said schedule; and may be allowed what they shall so lay out on passing their accounts in this cause.

The Schedule above referred to.

Names of occupiers.	Estimated amount to be laid out.		
	£	*s.*	*d.*
Peter Brice	209	8	6
John Witham	80	4	11
Benjamin Scholefield	137	11	3
	427	4	8

(*y*) See Dan. Pr. 1141.
(*z*) *Ibid.* For order in like case, see *Holden* v. *Holden*, V. C. W. at Chambers, 1 Feb. 1864, Reg. Lib. A. 209; and see Seton, 506—510—513, 527.

1331.

Summons for leave to protect testator's estate, on an application to Parliament (*a*).

Commence as in No. 1322, *ante*.

that the applicants may be at liberty to take such proceedings as they may be advised, to protect the testator's estate, and the interests of the parties interested in such estate, on the intended application to Parliament by the G. E. R. Company, for an Act to carry out their undertaking.

1332.

Summons for leave to present a clerk to an ecclesiastical benefice (*b*).

Commence as in No. 1322, *ante*.

that the applicants, as patrons or proprietors of the advowson of the rectory and parish church [*or as may be*] of ——, now vacant by the death [*or as may be*] of the Reverend A. B., may be at liberty to present the Reverend C. D., of (*residence*), Clerk in Holy Orders, to the Lord Bishop of London [*or as may be*], for institution to the said rectory and parish church.

1333.

Summons to confirm agreements for enfranchisement (*c*).

Commence as in No. 1322, *ante*.

that the (six) several agreements, of the respective dates set forth in the first column of the schedule hereto, and respectively entered into by A. B., on behalf of the applicants, the trustees, of the first part, and the defendant C. D. of the second part, with the several persons of the third part whose names are set forth in the second column of the said schedule, opposite the said respective dates, for the enfranchisement of the premises in the said agreements respectively described, at the prices set forth in the third column of the said schedule, may be respectively carried into effect.

The Schedule above referred to.

Date of agreement.	Name of the purchaser.	Price of enfranchisement.		
		£	*s.*	*d.*
31 March, 1871 &c.	John Jones . . . . &c.	208	3	1

(*a*) For order in like case, see *Cust* v. *Middleton*, M. R. at Chambers, 18 Jan. 1864, Reg. Lib. A. 109.

(*b*) For order in like case, see *Honywood* v. *Honywood*, M. R. at Chambers, 8 August, 1866, Reg. Lib. A. 2066. As to advowsons and presentations, see Cripps' Laws of the Church, 552, *et seq.*

(*c*) See Dan. Pr. 1141. For order in like case, see *Fox* v. *Earl Amherst*, V. C. S. at Chambers, 9 June, 1866, Reg. Lib. A. 1599.

1334.
Summons for leave to take admission to copyholds (*d*).

Commence as in No. 1322, *ante.*
that the applicants may be at liberty to take admission to the copyhold tenements which E. F., the testator in this cause, held of the manor of B. at the time of his death ; and to pay the fine and fees incident to such admission out of the assets of the said E. F. in their hands [*or as may be*].

1335.
Summons for leave to obtain a renewal of a lease (*e*).

Commence as in No. 1322, *ante.*
that the applicants may be at liberty to accept from G. H., a renewal, for the term of —— years, from Michaelmas next, at the annual rent of £——, of the lease dated the ——, 187—, of the Manor Farm at B., in the county of C., now forming part of the outstanding estate of the said E. F. : such lease to be granted to the applicants as executors of the will of the said E. F.

1336.
Summons to approve of an agreement to grant a lease (*f*).

Commence as in No. 1322, *ante.*
that the conditional contract dated the —— day of ——, 187—, entered into by the applicants
Or, by G. H., as the agent for, and on behalf of, the applicants *—or as may be,*
to grant to L. M. a lease of the manor farm at B., in the county of C. [*or as may be*], part of the trust estate of the testator E. F., on the terms and conditions therein mentioned, may be directed to be carried into effect : such lease to be approved by the Judge [*or as may be*].

(*d*) See Dan. Pr. 1141; and Seton, 513—521. As to investments in the purchase, or on mortgage, of land, see *ante*, Nos. 1268—1280, and notes thereto.

(*e*) See Dan. Pr. 1141. As to renewing, under 11 Geo. IV. & 1 Will. IV. c. 65, s. 12, leases belonging to, or granting or renewing leases of the lands of, infants and *femes covert*, see Dan. Pr. Chap. XLV.; and see *post*, Chap. XLV.

(*f*) See Dan. Pr. 1141. As to powers of leasing, see Sugd. Pow. 711—835; 22 & 23 Vic. c. 35, ss. 1—9; 23 & 24 Vic. c. 38, s. 6; Sugd. Stat. 310—313; Shelford, R. P. Acts, 683—686, 695; and *post*, Chap. XLV. As to contracts between landlord and tenant, the rights and liabilities of the parties, and judicial proceedings, see Woodfall, *passim;* see also Add. Cont. 294—361; Dixon, xiii.—xv.; L. C. Conv. 240—273; 1 Platt, xi.—xxvii.; 2 *ib.*, 82—154; Smith's Comp. 685—701; Williams' R. P. 373—406. As to agreements relating to land, see *ante*, No. 1268, n. (*h*). As to agreements for leases, see 5 Davidson's Conv. 1—18; for forms of agreements for leases, and of leases, see *ib.* 19—82, and 96—472; Woodfall, 1002—1027; and for the stamp duties thereon, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sch. As to agricultural customs, see Dixon, 1—37, 489.

1337.
Affidavit in support (*g*).

In Chancery.

(*Title of the cause, and reference to the record.*)

We, G. H., of (*residence and addition*), and J. K., of, *&c.*, severally make oath and say :

First, I the said G. H., for myself, say as follows :

1. I have, for —— years last past, carried on the business of a surveyor, auctioneer, and land and estate agent at ——, in the county of —— ; and I am well acquainted with the value, management, and letting of land and house property, in the neighbourhood of the farm hereinafter mentioned.

2. I am well acquainted with the farm and premises described or referred to in the agreement dated the —— day of ——, 187—, made between (*describe the parties*), and now produced and shown to me, and marked A. (*h*).

3. I was recently employed by the plaintiffs [*or as may be*] to obtain a tenant for the said farm and premises, and to negociate the letting thereof.

4. Having well considered the value of the said farm and premises, I am of opinion that the rent of £——, in the said agreement mentioned, is the best rent that can reasonably be obtained for the said premises ; and that the terms and conditions of the said agreement in other respects

If a draft lease has also been approved, add : and of the draft lease referred to in the said agreement, and now also produced and shown to me, and marked B. (*h*),

are fair and reasonable, and such as are usually inserted in leases of property of the same nature ; and in my judgment and opinion it will be beneficial to the estate of the testator E. F. [*or as may be*] that the said agreement should be carried into effect.

5. I have made inquiries as to the position and means of the said L. M. (*tenant*), and as to his ability to pay the rent, and perform the covenants and agreements on his part, contained in the said agreement, and to be contained in the lease to be granted in pursuance thereof. From information derived by me in prosecuting such inquiries, I am of opinion that the said L. M. is fully able to pay the said rent and perform the said covenants and agreements ; and that he is in all respects a desirable tenant for the said premises.

And I, the said J. K., for myself say, that the signature "——," set and subscribed to the agreement dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*h*), is of the proper hand-writing of the said L. M., one of the parties thereto : as I know from having seen him subscribe such signature thereto.

Sworn (*&c.: see ante*, No. 13).

(*g*) See Dan. Pr. 1142.

(*h*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

1338.
Summons to settle draft lease (*h*).

See *ante*, No. 1226.

1339.
Affidavit of examination of engrossments of lease and counterpart (*h*).

Formal parts: see ante, No. 9.

1. I have carefully examined and compared each of the two parchment writings now respectively produced and shown to me, and marked respectively A. and B. (*i*), with the draft or paper writing now produced and shown to me, and marked C. (*i*): being the draft of the lease settled at the Chambers of the Judge to whose Court this cause [*Or*, matter] is attached.

If so, add: pursuant to the order made therein dated the —— day of ——, 187—.

2. Each of the said parchment writings is a true and correct transcript and engrossment of the said draft.

1340.
Memorandum of allowance, or identity (*h*).

——, 187—.

(*Short title.*)

The Master of the Rolls [*Or*, Vice-Chancellor ——] has settled and approved this indenture.

Or, This is the indenture of lease [*Or*, counterpart of the indenture of lease] referred to in my certificate [*Or*, in the order] made in this cause [*Or*, matter] dated the —— day of ——, 187—.

R. M., Chief Clerk.

1341.
Chief Clerk's certificate of settlement of lease (*h*).

Formal parts: see post, No. 1511.

A proper lease to be granted to L. M., in the order dated the —— day of ——, 187—, named, pursuant to the agreement dated the —— day of ——, 187—, therein mentioned, has been settled: consisting of an indenture intended to be made between (*State whom: as in the lease*).

The said indenture, and a counterpart thereof, are respectively identified by my signature in the margin of the engrossments thereof respectively.

The evidence produced, *&c.*

1342.
Minute of order approving an agreement, and the lease to be granted in pursuance thereof (*h*).

(*Date, title, parties appearing, and evidence: see ante*, No. 1281.)

Order made: that the (within mentioned) conditional agreement dated, *&c.*, be carried into effect. And that the plaintiffs [*or as may be*] do execute the indenture of lease, marked A., intended to be made between (*Describe whom*), which has been

(*h*) See Dan. Pr. 1142.

(*i*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

settled and approved by the Judge as a proper lease to be granted in conformity with the said agreement; and which lease, and a counterpart thereof, are respectively identified by the signature of the Chief Clerk in the margin of the engrossments thereof. And that the said counterpart be executed by the said L. M., the lessee. (*Add any direction given as to costs.*)

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16. *Raising Money by Sale or Mortgage* (*l*).

1343. Order, on further consideration, to raise deficiency of personalty, by sale or mortgage of realty (*m*).

Date, title, and introduction.

It appearing by the Chief Clerk's certificate dated, *&c.*, that the personal estate of the testator A. B. is insufficient for the payment of his debts, and funeral expenses, and the costs of this suit [*or as may be*], it is ordered that the costs of the plaintiff and defendant of this suit, including in the defendant's costs any charges and expenses properly incurred by him as executor of the testator, be taxed by the Taxing Master, as between solicitor and client. And that subsequent interest be computed on the debts of the testator mentioned in the first schedule to the said Chief Clerk's certificate. And that a sufficient sum to make good the deficiency of the personal estate to pay what shall be due in respect of such debts, interest, and costs be raised by mortgage or sale of the testator's real estate specified in the second schedule to the said certificate, or of a competent part thereof, with the approbation of the Judge.

And that the money so to be raised be applied in payment of the said costs to the solicitors of the parties, respectively; and in payment of the amounts which shall be certified to be due to them, in respect of their said debts and interest respectively, to the several creditors of the testator, or to the legal personal representatives of such of them as may be dead.

And in case such money shall be directed to be raised by mortgage, such mortgage be settled by the Judge; and be executed by all necessary parties as he shall direct. And that the plaintiff, the tenant for life of the said estate [*or as may be*], do keep down the interest of such mortgage. And that such money be paid into the bank, to the credit of this cause. And that upon the due execution of such mortgage: such execution to be certified: the said debts, interest, and costs be paid out of such money, in manner aforesaid.

But in case such money shall be directed to be raised by sale, the proceeds of such sale be paid into the bank, to the credit of this cause, "Proceeds of sale of testator's real estate." And any of the parties are to be at liberty to apply in Chambers for the application thereof, as they may be advised.

(*l*) For the practice on this subject, see Dan. Pr. 1142—1144.

(*m*) See *Ibid.* 1142. For order in like case, see Seton, 245, No. 12. For the mode of working out the order, see Dan. Pr. 1142—1144; Seton, 246.

1344.
Statement of the amount to be raised (*n*).

In Chancery.

(*Short title, and reference to the record.*)

Statement of the amount to be raised by sale, or mortgage, of the testator's real estate, pursuant to the order dated the ——, 187—.

The liabilities to be provided for, pursuant to the said order, consist of:

	£	s.	d.
1. The testator's debts and interest, as certified by the Chief Clerk's certificate dated ——, 187—	4,379	5	10
2. Subsequent interest on the debts, say . .	109	0	0
3. Costs of the plaintiffs and defendants of this suit (*o*)	203	11	5
	£4,691	17	3

The personal estate of the testator applicable to the payment of the said liabilities consists of:

1. £2,360 11*s.* 8*d.* bank 3*l.* per cent. annuities, standing in the name of the Accountant-General on the credit of this cause—now worth at 90⅛ per cent.	£2,124	10	6			
2. Cash in the bank on the like credit	60	6	9			
				2,184	17	3
Leaving a deficiency, to be raised by sale or mortgage, of, say . . .				£2,507	0	0

1345.
Summons for leave for intended mortgagee to pay his advance into Court (*p*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or other person having the conduct of the suit*], that it appearing that the sum of £2,507 will be required to be raised to pay the amount due in respect of the debts, interest, and costs, by the order dated, *&c.*, directed to be raised by sale or

(*n*) See Dan. Pr. 1143.

(*o*) The costs of the intended mortgagee should be included in the costs of the plaintiff, or other party having the conduct of the cause: Dan. Pr. 1143, n. (*y*).

(*p*) See Dan. Pr. 1143. For order in like case, see Seton, 245, No. 13. As to the course, when the money has to be raised by sale, see Dan. Pr. 1143. As to conveyances by infants, under 11 Geo. IV. & 1 Will. IV. c. 47, s. 12, on a sale or mortgage to pay the debts of a deceased person, and as to vesting orders under the Trustee Acts in like case, see Dan. Pr. 1143; Seton, 688; Shelford, R. P. Acts, 483—486; Sugd. Stat. 418—419; and for forms of orders, see Seton, 825—827; *Pym* v. *Pym*, M. R. at Chambers, 28 Jan. 1862, Reg. Lib. B. 45. As to the nature and devolution of any surplus money, see Dan. Pr. 1144; 2 & 3 Vic. c. 60, s. 2.

mortgage of the testator's real estate [*or as may be*], and that A. B., of (*residence and addition*), is willing to lend the said sum upon the security of the indenture of mortgage hereinafter mentioned of the said estate, the said A. B. may be at liberty, on or before the —— day of ——, 187—, to pay the said £2,507 into the bank, to the credit of this cause ; and that, upon such payment being made, the defendant G. H. may execute and deliver to the said A. B. the indenture intended to be made between (*set out names of parties, as in deed*), which has been settled by the Judge as a proper mortgage to be executed in pursuance of the said order, and is identified by the signature of the Chief Clerk in the margin of the engrossment thereof.

1346.

Recitals in mortgage, of order to create same, and of payment of mortgage money into Court (*q*).

(*After recitals of decree, and Chief Clerk's certificate of deficiency of personalty*) And whereas by an order dated the —— day of ——, 187—, made by the Master of the Rolls [*Or*, said Vice-Chancellor] in the said cause the costs of the plaintiffs and defendants of the said cause were directed to be taxed ; And it was ordered that subsequent interest (*&c.: Continue recital of order to raise deficiency : see ante*, No. 1343) : And whereas by an order dated the —— day of ——, 187—, made by the said Judge in the said cause (*r*), after premising that it appeared that the sum of £—— would be required to pay the amount due (*&c.: see ante*, No. 1345, *to* of the said estate), and that the Judge was of opinion that the said sum should be raised by mortgage, It was ordered that the said A.B. should be at liberty (*&c.: Continue as in* No. 1345, *to the end : substituting* the parties therein named, *for the names, &c., of the intended parties to the mortgage*), meaning thereby these presents and the signature in the margin hereof (*s*) : And whereas in pursuance of, and in obedience to the last recited order, the said A. B. on the —— day of ——, paid the said sum of £—— into the Bank of England, with the privity of the Accountant-General of the said Court, to the credit of the said cause : as appears by the receipt of one of the cashiers of the said Bank, and by the certificate of the said Accountant-General, dated respectively the —— and —— days of ——, 187— : Now this indenture witnesseth that in consideration of the payment of the said sum of £—— by the said A. B. in manner aforesaid, *&c., &c.*

(*q*) See Dan. Pr. 1143.

(*r*) For form of summons to ground this order, see *ante*, No. 1345.

(*s*) For forms of affidavit of examination of engrossment, and memorandum of approval, see *ante*, Nos. 1275, 1276.

1347.
Proviso, restricting the exercise of a power of sale, where sanctioned in a mortgage approved at Chambers (*t*).

Provided always, that the power of sale hereinbefore contained shall not be exercised unless, or until, the sanction of the Judge to whose Court the said cause of A. *v.* B. (*suit in which mortgage sanctioned*) shall for the time being be attached shall have been obtained to the exercise thereof.

1348.
Proviso, excluding the application of the 23 & 24 Vic. c. 145 (*u*) to a mortgage.

And it is hereby declared by the parties hereto, that none of the powers or incidents by the Statute of the 23rd and 24th years of the reign of Her present Majesty, cap. 145, conferred or annexed to particular offices, estates or circumstances, shall take effect or apply to this security.

Or, Provided always, and it is hereby declared, that none of the provisions of the Act of Parliament of the 23rd and 24th years of Queen Victoria, cap. 145, shall apply to the security hereby created.

Or, And it is hereby declared that the Act of the 23rd and 24th Victoria, cap. 145, shall not apply to these presents.

1348 a.
Declaration, applying the provisions of the above Act to a mortgage, but restricting the exercise thereof.

And it is hereby declared, that the said (*lenders*) and their assigns, and the survivor of them, his executors, administrators, and assigns, or any of them, shall and may have and exercise the power of sale and other powers given to mortgagees in the Act of the 23rd and 24th Victoria, cap. 145, and other the powers and remedies to which mortgagees are entitled: nevertheless, such power of sale shall not be exercised unless (*Continue as in* No. 1347, *ante, to* exercise thereof).

1349.
Chief Clerk's certificate of computation of subsequent interest on debts (*y*).

Formal parts: see post, No. 1511.

1. Subsequent interest has been computed on the debts of the testator mentioned in the first schedule to my certificate in this cause dated the ——, 187—, at the rate of interest which such debts respectively carry, and from the date of the said certificate to the date of this certificate. The particulars of such subsequent interest are set forth in the fifth column of the schedule hereto, and such subsequent interest amounts to £——: which sum of £—— has been added to the respective amounts certified by my said certificate to be due; and which amounts are also specified in the fourth column of the schedule hereto. The total amount now due to each creditor is set forth in the sixth column of the schedule hereto; and such debts, interest, and

(*t*) As to the insertion of a power of sale in a mortgage sanctioned by the Court, see *Russell* v. *Plaice*, 18 Beav. 21; *Selby* v. *Cooling*, 23 Beav. 418.

(*u*) Commonly called Lord Cranworth's Act.

(*y*) See Dan. Pr. 1143.

costs, including such subsequent interest, now amount in the whole to the sum of £——.

The sum directed to be raised by sale or mortgage by the said order of the ——, 187—, has been raised by mortgage, with the approbation of the Judge. The sum so raised amounts to £——, and has, pursuant to an order dated the ——, 187—, been paid by A. B., the mortgagee, into the bank, to the credit of this cause.

The indenture of mortgage to the said A. B., in the said order of the ——, 187— mentioned, has been executed by the defendant G. H., and delivered to the said A. B., as thereby directed.

The said £—— is, pursuant to the said order of the ——, 187—, to be applied in payment of the costs, amounting to £——, certified by the Taxing Master's certificate dated the ——, 187—, and in payment of the debts, interest, and costs amounting to £——, specified in the schedule hereto.

The evidence produced, *&c.*

The schedule above referred to (*z*).

Serial number.	Names of the creditors.	Addresses.	Amounts certified to be due by the Chief Clerk's certificate, dated ——, 187—.	Subsequent interest.	Total amounts now due.

17. *Apportionment of Deficient Fund* (*a*).

1350. Affidavit, verifying an apportionment of a fund in Court (*b*).

Formal parts: see ante, No. 9.

1. I have apportioned (*Describe what: according to the order directing the apportionment to be made; as thus:*

the sum of £1,588 10*s.* cash (residue of the money arisen from the sale of the £2,000, bank 3*l.* per cent. annuities in the order made in this cause [*Or*, matter] dated the ——, 187—, mentioned, and of the interest accrued thereon prior to such sale, which remains after payment thereout of the

(*z*) Insert the particulars from the former certificate, and in the same serial order.

(*a*) See Dan. Pr. 1144—1145. As to the distinction between real and personal, and legal and equitable assets, see Haddan, 66—79; 2 L. C. Eq. 101—124, 1018—1020; Ram on Assets, 181—203; Smith's Comp. 511; Trower, 268—275; Williams' Exors. 1926, 1927; Williams' Real Assets, 1—14; and for the principles on which assets are applied and distributed in equity, see Haddan, 90—139; Ram, xix.—xxvii.; Smith's Comp. 512—527; Trower, 295—306; Williams' Exors. 1927; Williams' Real Assets, 95—118; and see *Baker* v. *Farmer*, W. N. (1867), 182, V. C. M. For forms of orders for apportionment of deficient funds, see Seton, 141, 142, 243.

(*b*) See Dan. Pr. 1145.

costs, and costs, charges, and expenses by the said order directed to be so paid),

amongst (*State whom : according to the order ; as thus :*

the several creditors [*Or*, legatees] in the Chief Clerk's certificate dated the ——, 187—, respectively named) ;

and in making such apportionment I have, according to the direction of the said order, computed and added to the amount by the said certificate certified to be due to each creditor [*Or*, legatee—*or as may be*], subsequent interest on his debt [*Or*, legacy] from the ——, 187—, to the ——, 187—, at the rate of interest which such debt [*Or*, legacy] carries.

2. The result of such apportionment and computation is set forth in the schedule hereto ; and as so set forth is true and correct. The names of the said creditors [*Or*, legatees] respectively are set forth in the second column of the said schedule, and the amounts apportioned to them respectively are set forth in the sixth column of the said schedule, opposite their respective names.

The schedule above referred to (*c*).

Serial No.	Names of creditors [*Or*, legatees] (*d*).	Addresses.	Amounts before certified to be due, and subsequent interest.	Totals due.	Amounts apportioned.
			£ s. d.	£ s. d.	£ s. d.
1	John Jones .	20, Cheapside, London, Woollen-draper .	200 0 0		
		Subsequent interest . . .	17 10 0	217 10 0	57 4 8
2	Thomas Young and Robert Young.	Braintree, in the county of Essex, executors of William Young, deceased . .	200 0 0		
		Subsequent interest . . .	17 10 0	217 10 0	57 4 8
				Total . £	114 9 4

(*c*) For this form of schedule, see Regul. 8 Aug. 1857, Sched. No. 12.

(*d*) The names of the creditors [or legatees] are to be stated in the same order as in the Chief Clerk's certificate from which they are taken.

1351.
Statement of an apportionment to be certified by the Chief Clerk (*e*).

In Chancery.

(*Short title, and reference to the record.*)

Concise statement of the plaintiff [*or as may be*], as to the apportionment to be made pursuant to the order dated the ——, 187—.

	£	*s.*	*d.*
Cash produced by sale of the £2,000, bank 3*l.* per cent. annuities, directed to be sold by the said order	1,800	0	0
One year's dividend accrued thereon on 5th April, 1871, prior to such sale . . .	58	10	0
	£1,858	10	0
Amount of plaintiff's taxed costs paid thereout, as directed by the said order. £150 0 0			
The like of defendant's costs . . 120 0 0			
	270	0	0
Balance to be apportioned . .	£1,588	10	0
Total amount by the Chief Clerk's certificate dated the ——, 187—, certified to be due to the several creditors [*Or*, legatees] .	3,500	0	0
Subsequent interest on the debts [*Or*, legacies] from the date of the said certificate, to the ——, 187—	100	0	0
	£3,600	0	0

The said balance of £1,588 10*s.* 0*d.* is apportionable amongst the said several creditors [*Or*, legatees], pursuant to the said order, as follows:—

(*Set out the apportionment: see the schedule to* No. 1350, *ante.*)

1352.
Chief Clerk's certificate of the apportionment (*e*).

Formal parts: see post, No. 1511.

Subsequent interest has been computed on the several debts [*Or*, legacies] certified by my certificate dated the ——, 187—, as directed by the said order.

The sum of £1,588 10*s.* 0*d.*: the residue of the money which arose from the sale of the £2,000 bank 3*l.* per cent. annuities, by the said order directed to be sold, and of the interest accrued prior to such sale, after payment thereout of £270, certified by the Taxing Master to be the total amount of the costs, and costs, charges, and expenses by the said order directed to be so paid: has been apportioned rateably amongst the several creditors [*Or*, legatees] named in the first schedule to my said certificate dated the ——, 187—. The names of the several creditors [*Or*, legatees] are set forth in the second column of the schedule

(*e*) See Dan. Pr. 1145.

hereto, and the amounts apportioned to them respectively are set forth in the sixth column of the said schedule, opposite their respective names.

The evidence produced, *&c.*

The schedule above referred to.

(*The same as the schedule to* No. 1350, *ante.*)

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18. *Appointment of new Trustees* (*f*).

1353.

Affidavit of eligibility of proposed trustees (*g*).

Formal parts: see ante, No. 9.

1. *Show deponent's personal knowledge of the proposed trustees; as thus:* I have, for —— years last past, known, and been well acquainted with E. F., of (*residence and addition*), and G. H., of (*residence and addition*), the persons proposed to be appointed new trustees of the will of A. B., late of (*residence and addition*), deceased, the testator in the decree [*Or*, order] in this cause [*Or*, matter], dated the —— day of ——, 187—, named.

Or, of the indenture of settlement, dated the —— day of ——, 187—, made on the marriage of A. B. with C. D., in the decree, *&c.*, mentioned—*or as may be.*

2. *Show the position in life of the proposed trustees, and their eligibility; as thus:* The said E. F. has, for —— years last past, carried on business as a banker at ——, in the (county) of ——. The said G. H. has, for —— years last past, carried on business as a wine-merchant at ——, in the (county) of ——. During my aforesaid acquaintance with them I have had many opportunities of forming an opinion as to their habits of business and integrity. The said E. F. and G. H. respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits, and of strict honour and integrity.

3. In my judgment and opinion the said E. F. and G. H. are fit, proper, and eligible persons to be appointed new trustees of the said will [*Or*, indenture of settlement—*or as may be*].

1354.

Consent to act of proposed trustees (*g*).

In Chancery.

(*Short title, and reference to the record.*)

We the undersigned E. F., of (*residence and addition*), and G. H.,

(*f*) As to the appointment of new trustees, and vesting the trust estate, see Dan. Pr. 1145—1146; Lewin, 458—477, 851—853; Seton, 780—782. As to the duties and powers of, and allowances to, trustees and executors, see Lewin, 236—450, 887—888; and see 2 L. C. Eq. 221—244, 793—836, 1070—1076; Seton, 752—758, 764—770. For forms of decrees and orders relative to the appointment of new trustees, breaches of trust, charging with interest, an costs and expenses, see Seton, 748—770, 778—782. As to the jurisdiction of the County Courts, see 28 & 29 Vic. c. 99, s. 1; Dan. Pr. 1145, n. (*p*).

(*g*) See Dan. Pr. 1146.

of (*residence and addition*), do hereby testify our consent to accept the office of trustees, and to act in the trusts, of the will of A. B., late of (*&c.; as in* No. 1353, *ante*): in case the Court of Chancery shall think fit to appoint us to that office. Dated this —— day of ——, 187—.

E. F.
G. H.

Signed by the said E. F. and G. H. in the presence of,
J. K., of (*residence and addition*).

1355.

Affidavit, verifying the signatures thereto (*h*).

Formal parts: see ante, No. 9.

1. The signatures "——," and "——," respectively set and subscribed to the paper writing marked A., hereunto annexed (*i*),

Or, now produced and shown to me,

purporting to be the consent, dated the —— day of ——, 187—, of E. F. and G. H., to accept the office of trustees of the will of A. B. [*or as may be*], are of the respective proper handwriting of the said E. F. and G. H., in such paper writing respectively named and described: as I know from having seen them respectively sign the said paper writing.

1356.

Summons to appoint the new trustees (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that pursuant to the decree [*Or*, order] dated the —— day of ——, 187—, E. F., of (*residence and addition*), and G. H., of, *&c.*, may be appointed trustees of the will of A. B., the testator therein named [*or as may be*], in lieu of L. M., now deceased, and N. O., in the said decree named [*or as may be—and add, if necessary, directions for conveying, assigning, or vesting the trust property in the new trustees*].

(*h*) See Dan. Pr. 1146.

(*i*) It seems desirable to file the consent with the affidavit.

(*k*) See Dan. Pr. 1346. As to vesting the trust property in the new trustees, either by deed or vesting order, see *ib.* For forms of deeds of appointment and of conveyance, see 2 Prideaux's Conv. 462—472; 4 Davidson's Conv. 585—632. As to the stamp duty, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sch.; see also 2 Prideaux's Conv. 462, n. As to vesting orders, see *post*, Chap. XLV. sec. 4. For order appointing new trustees, and vesting the trust estate by a description in a schedule thereto, see *Re Hawkins*, V. C. W., 16 June, 1866, Reg. Lib. A. 2121. As to the statutory power of trustees to appoint successors, see 23 & 24 Vic. c. 145, ss. 27, 32; Dan. Pr. 1146.

19. *Settlement of deeds* (*l*).

1357. Summons to proceed (*m*).

The same as No. 1226, *ante*.

1358. Direction to the conveyancing counsel to settle the draft of the deed (*n*).

Formal parts : see ante, No. 1263.

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed, that the draft of the deed, by the decree [*Or*, order] dated the —— day of ——, 187—, directed to be settled, be perused and settled by the conveyancing counsel in rotation [*or as may be* (*o*)].

1359. Recitals, in the draft, of the decree or order, and certificate of approval (*p*).

And whereas by a decree [*Or*, order] made in the said cause [*Or*, matter—*or as may be*] by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——, *or as may be*], and dated the —— day of ——, 187—, it was ordered that (*Recite so much of the decree or order as is material : including the direction that the deed be settled by the Judge, either absolutely, or in case only the parties differ*). And whereas it appears by the certificate dated the —— day of ——, 187—, of the Chief Clerk of the said Judge, that these presents have been settled by the said Judge, as a proper deed of conveyance [*or as may be*], in pursuance of the said recited decree [*Or*, order].

1360. Certificate on copy of draft (*q*).

The same as No. 1274, *ante*.

1361, 1362. Affidavits of examination of engrossment, and of execution (*r*).

The same as Nos. 1275, 1279, *ante*.

1363. Memorandum of identity (*r*).

The same as No. 1276, *ante*.

(*l*) As to the settlement of deeds at Chambers, and when this must be done, and when only in case the parties differ, see Dan. Pr. 1146—1148, 1172; Ord. XXXV. 17.

(*m*) See Dan. Pr. 1146.

(*n*) See Dan. Pr. 1147. As to obtaining the assistance of the conveyancing counsel, see *ib.* ; and *ante*, No. 1263, n. (*y*).

(*o*) For form of note of the rotation name, see *ante*, No. 1264; and see *ib.* n. (*a*).

(*p*) See Dan. Pr. 1147.

(*q*) *Ibid.* 1147, n. (*g*); and *ante*, No. 1274, n. (*t*).

(*r*) See Dan. Pr. 1148.

1364.

Certificate of approval (and execution) of deed (*s*).

Formal parts: see post, No. 1511.

A proper conveyance to A. B., in the decree [*Or*, order] dated the —— day of ——, 187—, named, of the hereditaments therein mentioned [*or as may be: according to the decree or order*], has been settled: consisting of an indenture intended to be made between (*State whom: as in the deed*). The said indenture is identified by my signature in the margin of the engrossment thereof.

If so: The said indenture has been executed by the plaintiff C. D., and defendant E. F. [*or as may be* (*t*)].

The evidence produced, *&c.*

1365.

Certificate of execution (*u*).

The same as No. 1280, *ante*.

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20. *Sales by the Court* (*x*).

1366.

Notice of motion, or summons, for the sale of real estate, under 15 & 16 Vic. c. 86, s. 55 (*y*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff, that the real estate of A. B., the testator in the pleadings of this cause named [*or as may be*], may be sold with the approbation of the Judge: free from (*Continue as in* No. 870, *ante, to* priorities (*z*)).

1367.

Consent of an incumbrancer, to estate being sold, free from his incumbrance (*a*).

In Chancery.

(*Short title of the cause, and reference to the record.*)

I, the undersigned C. D., of (*residence and addition*), do hereby consent that the real estate of A. B., the testator in the decree

(*s*) See Dan. Pr. 1148. For forms of certificate of good title, approval of conveyance, and parties to execute, and receive the consideration money, see *ante*, No. 1278; and of approval of lease, *ante*, No. 1341.

(*t*) See Dan. Pr. 1120, n. (*p*).

(*u*) *Ibid.* 1120, n. (*p*), 1148.

(*x*) As to sales by the Court, see Dan. Pr. 1148—1187; 1 Davidson's Conv. 501—515; Dart, 1061—1077—1113, 1264; Fisher, 518—529; Seton, 1183; Sugd. V. & P. 93—121. As to a sale, instead of a foreclosure, under 15 & 16 Vic. c. 86, s. 48, see Dan. Pr. 1150—1152; and for forms of orders in like case, see Seton, 365, 366. As to sales with an indefeasible title, under 25 & 26 Vic. c. 53, see Dan. Pr. 1152; and *post*, Chap. XLV. sec. 25.

(*y*) See Dan. Pr. 1149. For order in like case, on motion, see *Tulloch* v. *Tulloch*, V. C. M., 24 Jan. 1867, Reg. Lib. B. 103; 3 Law Rep. Eq. 574; and for order, on summons, for the sale of real estate, see *Harby* v. *Moore*, V. C. S. at Chambers, 9 Jan. 1864, Reg. Lib. A. 43. Where the estate is incumbered, and inquiries are necessary as to the particulars thereof, the amounts due thereon, and their priorities, see Nos. 870, 871, *ante*.

(*z*) If the estate is unincumbered, vary the form accordingly.

(*a*) See Dan. Pr. 1150. As to the interest, in lieu of notice, to which an

[*Or*, order] in this cause dated the ——, 187—, named [*or as may be*], shall be sold, with the approbation of the Judge, under the provisions of the said decree [*Or*, order], free from my mortgage thereon, for the sum of £500 and interest, created by an indenture dated the ——, 187—. And I agree to join in such sale, and in the conveyance thereof to the purchaser; and to produce, whenever required, for the purpose of such sale, such of the title deeds and writings relating to the said estate as are in my possession or power. Dated this —— day of ——, 187—.

C. D.

Witness to the signature of the said C. D.,
G. H. of (*residence and addition*).

1368. Proposal of sale (*b*).

In Chancery.

(*Short title, and reference to the record.*)

The proposal of the plaintiff [*or as may be*], for the sale of the real and leasehold estates [*or as may be*], directed to be sold by the decree [*Or*, order] dated the ——, 187—.

The said estates consist of the particulars set forth in the schedule hereto.

If so: The said estates have been recently surveyed by Mr. G. H., of (*residence and addition*): who has divided and allotted the same in the manner shown by the said schedule, as the most desirable and beneficial mode of offering the same for sale.

There is no incumbrance on the said estates.

Or, The only incumbrancer upon the said estates is C. D., of (*residence and addition*): who has a mortgage thereon for the sum of £——; and who consents [*Or*, who refuses his consent] to the said estates being sold freed from his incumbrance, upon the terms of the said decree [*Or*, order].

It will be beneficial to the parties interested therein that the said estates shall be sold by auction at ——, in the county of ——, in —— lots.

L. M., of ——, auctioneer, is a fit person to be appointed to sell the said estates.

The plaintiff [*or as may be*] proposes, that the said estates shall be sold by public auction, by the said L.M., in the lots, and at the place aforesaid, on the —— day of

incumbrancer, consenting to a sale, is entitled, see *ib.*; and see Dart, 1105; Seton, 1202.

(*b*) See Dan. Pr. 1153, n. (*i*). A proposal of sale is required at some, but not at all, the Chambers: *ib.* As to the different modes of sale which may be sanctioned by the Court, and the course of proceeding to a sale by auction, see *ib.* 1152, 1153. As to sales by private contract, see *post*, Nos. 1450—1456. As to who may act as auctioneer, see Dan. Pr. 1157, n. (*p*); and as to his remuneration, see *ib.* 1157.

——, 187—, subject to conditions of sale to be approved of in Chambers; and free from [*Or*, subject to] the said incumbrance [*or as may be*].

The schedule above referred to.

(*Set out the particulars of each lot—the tenure—by whom occupied, and at what rent, and for what term, &c.*)

1369.

Summons, for the appointment of a stranger to conduct the sale (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that A. B., of (*residence and addition*), gentleman, one of the solicitors of this Court (he consenting), may be appointed to conduct the sale directed by the decree [*Or*, order] dated the ——, 187—, of the estates therein mentioned: the plaintiffs and defendants respectively having liberty to bid at the said sale; and that the costs of the said A. B. of and incident to such sale may be provided for, in such manner as the Judge shall hereafter direct.

1370.

Summons, for delivery out, for the purposes of the sale, of documents deposited in Court (*d*).

Formal parts: see ante, No. 60.

on the part of the plaintiff,

Or, defendant—*Or*, of A. B., the person appointed to conduct the sale in this suit—*or as may be*,

that (*Describe the documents; as thus:*

the several deeds and documents specified in the schedule to the affidavit of the defendant C. D., filed the ——, 187—, and deposited by him with the Clerk of Records and Writs, pursuant to the order dated the ——, 187—, or such of them as the applicant may deem necessary),

may be delivered out to the applicant, or to Messrs. E. F., and G. H., his solicitors, or one of them, to enable him [*Or*, them], to prepare for, and conduct, the sale directed by the decree [*Or*, order] dated the ——, 187—: the applicant undertaking to redeposit the same whenever required so to do by the Judge; and that, in the meantime, the parties entitled to inspect the documents so delivered out shall be at liberty at all seasonable times, upon reasonable notice, to inspect the same at the office of the said Messrs. E. F., and G. H., situate at, *&c.;* and to take copies and abstracts thereof, and extracts therefrom, as they may be advised, at their expense.

(*c*) See Dan. Pr. 1153. For order in like case, see *Rowland* v. *Evans*, M. R. at Chambers, 23 April, 1862. As to the person to whom the conduct of the sale is usually given, see Dan. Pr. 1153.

(*d*) See Dan. Pr. 1154. In *Re Powell, Tomkins* v. *Phelps*, M. R. at Chambers, 27 Jan. 1869, an application by the plaintiff (a residuary legatee), in an administration suit, for delivery by the defendants, the executors, to him of the title deeds to the testator's leaseholds, for the purposes of a sale directed in the

1371.
Particulars of sale (*e*).

In Chancery.

(*Short title of the cause or matter, and reference to the record.*)

Particulars and conditions of sale of (*Insert a general description of the property; as thus:*

(1). Introductory.

certain freehold and leasehold estates, situate in the parish of ——, in the county of ——: comprising, a freehold farm called "Manor Farm," containing about 180 acres of arable, meadow, and pasture land; and four leasehold cottages situate in Bakewell Lane, adjoining the said farm, held for an unexpired term of about 70 years at a nominal rent):

which will be sold by auction, by Mr. L. M., with the approbation of the right honourable the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——], the Judge to whose Court this cause [*Or*, matter] is attached: pursuant to the decree [*Or*, order] therein dated the —— day of ——, 187—: at the —— Hotel, at ——, in the county of —— (*f*), on ——, the —— day of ——, 187—, at (5 for 6) o'clock in the evening, in —— lots.

Particulars and conditions of sale may be had, gratis, of Mr. A. B., of ——, in the county of ——, solicitor; of Messrs. C. and D., of, *&c.*; of the auctioneer at ——; and at the place of sale (*g*).

PARTICULARS.

(2). Formal particulars.

Lot 1. A freehold farm called "Manor Farm," situate at ——, in the parish of ——, and county of ——: consisting of 180 acres of arable, meadow, and pasture land, in a high state of cultivation, and a large and commodious farmhouse, brickbuilt, and tiled, containing ten rooms: with large barn, cart sheds, stables, and other outbuildings. This lot is in the occupation of Mr. A. B.,

suit, was refused; but liberty was given to the plaintiff to inspect the deeds at all seasonable times, and the defendants were directed to deliver to him any abstract in their possession: such abstract to be returned to them after the sale.

(*e*) See Dan. Pr. 1154. For full information as to the preparation and settlement of particulars and conditions of sale, see Dan. Pr. 1154—1156; Dart, 91—161, 1084, 1085, 1146, 1147; 1 Davidson's Conv. 439—450; 1 Prideaux's Conv. 1—26; Sugd. V. & P. 12—43, 97, 98; and as to the mode of describing the good will of a business, see *Johnson* v. *Holleley*, *post*, No. 1408. For a collection of forms of particulars of sale, see Cox's Forms, 238—266a. For forms of affidavit by trustees in answer to the usual inquiries as to real estate and incumbrances thereon, see *ante*, Nos. 1291, 1296.

(*f*) The sale may be in London, or the country, as the Judge may think fit: Dan. Pr. 1157, n. (*n*); and see Ord. 16 July, 1851, r. 1: 14 Beav. xiii.; Ord. XXXV. 61.

(*g*) The public are never to be referred to the Judge's Chambers as a place where prints of the particulars and conditions may be obtained: Dan. Pr. 1159, n. (*n*).

under an agreement which expires at Michaelmas next, at the annual rent of £300. The farm is sub-divided as follows :—

No. on plan annexed.	Description.	State.	Quantity. A.	R.	P.
140	House and homestead .		0	2	0
141	Homeclose . . .	Meadow . .	4	0	0
143	Long ten acres . . .	Arable . .	10	2	0
	(*Set out the rest of the parcels in like manner.*)	Total .	180	0	0

Lot 1 will be sold subject to a right of way, reserved to the owner of the adjoining lands, and his servants, and others, across the long ten acres, by a footpath running from west to east.

Lot 2. Four leasehold cottages, each containing four rooms and a closet, and a small garden to each cottage : all situate in Bakewell Lane, adjoining the long ten acres.

Lot 2 is held under a lease for a term of 80 years from Lady Day, 18—, at a ground rent of £— ; and is now in the several occupations of C., D., E., and F. as weekly tenants, at rentals amounting together to £—, per annum.

1372.

Memorandum of direction to the conveyancing counsel, to advise on, and settle, the conditions of sale (*h*).

Formal parts : see ante, No. 1263.

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed, that an abstract of title to the estates by the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—, directed to be sold : and which are comprised in the particulars to which I have put my initials : be laid before the conveyancing counsel in rotation [*or as may be* (*i*)], for his opinion thereon, with a view to such sale ; and to advise what, if any, special conditions of sale are rendered necessary or proper by the state of the title ; and that such special conditions, if any, be settled by such counsel.

(*h*) See Dan. Pr. 1155. As to the necessity for laying the abstract before the conveyancing counsel, see *ib.* ; 15 & 16 Vic. c. 86, s. 56. As to the root of title, and the title to be shown to different species of property, see Dart, 265, *et seq.* ; 1 Davidson's Conv. 459—466 ; 1 Prideaux's Conv. 117, *et seq.* ; Sugd. V. & P. 364—381 ; and as to the preparation of the abstract, see Dart, 273, *et seq.* ; 1 Davidson, 455 ; 1 Prideaux, 117, *et seq.* ; Sugd. V. & P. 405—411, 817. The particulars of sale should, in strictness, be settled at Chambers before the abstract is sent to the conveyancing counsel ; but this is often disregarded in practice : Dan. Pr. 1155, n. (*h*). An affidavit verifying the abstract is not required, preparatory to a sale by the Court : *ib.* n. (*c*) ; the rule is otherwise on a purchase by the Court : *ib.* 1118. For forms of such affidavit on a purchase, see *ante*, Nos. 1271, 1272.

(*i*) As to obtaining the reference to the conveyancing counsel in rotation, or

1373.

CONDITIONS OF SALE.

Ordinary conditions of sale (*k*):

1. No person is to advance less than £—— at each bidding. (1). Advance at each bidding (*l*).

2. The sale is subject to a reserved bidding for each lot: which has been fixed by the Judge to whose Court this cause is attached; and the vendor reserves a right to bid (*n*). (2). Reserved bidding (*m*).

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, in the bidding paper; and the abstract of title, and all written notices, and communications, and summonses, are to be deemed duly delivered to and served upon the purchaser, by being left for him at such address: unless or until he is represented by a solicitor. (3). Bidding paper (*o*).

4. Each purchaser is, at the time of sale, to pay a deposit of £— per cent. on the amount of his purchase money to A. B., the person appointed by the said Judge to receive the same. (4). Deposit. (*p*).

5. The Chief Clerk of the said Judge will after the sale proceed to certify the result; and ——, the —— day of ——, 187—, at —— of the clock in the ——noon, is appointed as the time at which the purchasers may, if they think fit, attend, by their solicitors, at the Chambers of the said Judge in the Rolls' Yard, Chancery Lane [*or as may be: see ante*, No. 1123], in the county of Middlesex, to settle such certificate. The certificate will then be settled; and will in due course be signed and filed, and become binding, without further notice or expense to the purchasers. (5). Certifying result of sale (*q*).

6. The vendor is, within —— days (*s*) after such certificate has (6). Time for delivery of the abstract (*r*);

to one in particular of such counsel, see Dan. Pr. 1046, 1047; and *ante*, No. 1263, n. (*z*). For form of note of the rotation name, see *ante*, No. 1264.

(*k*) For this form, see Regul. 8 Aug. 1857, Sched. No. 7. As to the preparation and settlement of conditions of sale, see Dan. Pr. 1155, 1156; and *ante*, No. 1371, n. (*e*).

(*l*) See Dan. Pr. 1156.

(*m*) *Ibid.* Where the property is to be sold without reserve, this condition is varied accordingly: *ib.* 1156, n. (*g*); and as to the form of this condition, generally, see the Sale of Land by Auction Act, 1867 (30 & 31 Vic. c. 48), ss. 5—8. As to reserved biddings, see Dan. Pr. 1158; and *post*, Nos. 1379, 1380.

(*n*) *Yonge* v. *Furse*, Rolls' Chambers, Aug. 1870.

(*o*) As to the bidding paper, see Dan. Pr. 1156, 1161; and *post*, Nos. 1388, 1397.

(*p*) This is to be inserted only when a deposit is directed: in which case, the person appointed to receive the deposit must give security. As to deposits, see Dan. Pr. 1156—1158; and *post*, Nos. 1383—1385.

(*q*) See Dan. Pr. 1156; and *post*, Nos. 1390, 1399.

(*r*) See 15 & 16 Vic. c. 86, s. 56; Dan. Pr. 1155, 1156; and *post*, No. 1412.

(*s*) The ordinary period is four or seven days after the delivery of the abstract: Dan. Pr. 1164, n. (*g*).

become binding, to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within —— days after the actual delivery of the abstract, to deliver at the office of Mr. A. B., solicitor, at C., in the county of D., a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract; and upon the expiration of such last-mentioned time—and in this respect time is to be deemed of the essence of the contract—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions if any.

and objections and requisitions (*t*).

(7). Ascertaining value of timber (*u*).

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1*s.* per stick inclusive: the amount thereof to be ascertained by a valuation to be made in manner following; that is to say:—each party (vendor and purchaser), or their respective solicitors, is, within —— days after the Chief Clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment; and the valuers so appointed are to make such valuation; but before they commence their duty, they are to appoint an umpire by writing; and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof, in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

(8). Payment of purchase money (*x*).

8. Each purchaser is, under an order for that purpose to be obtained by him,

or, in case of his neglect, by the vendors at the costs of the purchaser (*y*),

upon application at the Chambers of the said Judge, to pay the amount of his purchase money

(after deducting the amount paid as a deposit), together with the amount of the valuation under the 7th condition, if any (*z*),

into the Bank of England, with the privity of the Accountant-General of this Court, to the credit of this cause [*or as may be* (*a*)], on or before the —— day of ——, 187—; and if the same is not so paid, then the purchaser is to pay interest on his purchase money,

(*t*) See Dan. Pr. 1156.

(*u*) *Ibid.* As to timber, see *post*, No. 1457.

(*x*) See Dan. Pr. 1156, 1170, 1171; and *post*, Nos. 1413, 1414, 1416—1418.

(*y*) See Dan. Pr. 1179; and *post*, No. 1439.

(*z*) This must be altered, if the 4th or 7th condition is not inserted.

(*a*) This must be in accordance with the decree or order directing the sale.

including the amount of such valuation (*b*), at the rate of £— per cent. per annum, from the —— day of——, 187—, to the day on which the same is actually paid: deducting property tax (*c*). Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the —— day of ——, 187— (*d*), down to which time all outgoings are to be paid by the vendors. Possession. Outgoings.

9. If any error or misstatement shall appear to have been made in the above particulars, such error or misstatement is not to annul the sale, nor entitle the purchaser to be discharged from his purchase; but a compensation is to be made to, or by, the purchaser, as the case may be; and the amount of such compensation is to be settled by the said Judge at Chambers. (9). Compensation (*e*).

[*Add to these, such conditions respecting the title, and title deeds, as the conveyancing counsel shall advise to be necessary or proper* (*f*).]

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge, upon application at Chambers, for the resale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such resale, and of all costs and expenses occasioned by such default. (10). Resale on default (*g*).

1374.

Examples of special conditions of sale (*h*):

If any purchaser shall make any valid objection or requisition which the vendor may be unable to remove or comply with, such purchaser may be discharged from being purchaser by an order of the Judge; and, notwithstanding intermediate negociations, such purchaser shall be entitled to a return of his deposit (if any), but shall not, unless the Judge shall otherwise direct, be entitled to any interest, costs, expenses or damages in respect of his purchase. (1). Rescission of the contract of sale (*i*).

Or, If the purchaser shall insist on any objection or requisition which the vendors shall consider themselves unable, or on the ground of expense, or for any other reason which the Judge shall consider sufficient, shall decline to remove or comply with, the vendors, with the sanction of the Judge,

(*b*) This must be altered, if the 7th condition is not inserted.

(*c*) As to the property tax, see *post*, No. 1413, n. (*k*).

(*d*) See Dan. Pr. 1156; and *post*, Nos. 1413—1420.

(*e*) See Dan. Pr. 1156, 1170; and *post*, Nos. 1418, 1419.

(*f*) See Dan. Pr. 1156; and *post*, No. 1374.

(*g*) See Dan. Pr. 1156; and *post*, Nos. 1439, 1440.

(*h*) See Dan. Pr. 1156; and *ante*, No. 1373 (9). For collections of special conditions of sale, see 1 Davidson's Conv. 537—645; 1 Prideaux's Conv. 28—57; Cox's Forms, 267—313.

(*i*) See Dan. Pr. 1166, n. (*c*); and *post*, Nos. 1442, 1443.

shall, notwithstanding any intermediate negociation, and although they may have insisted that the objections and requisitions are untenable, be at liberty, by notice in writing, signed by their solicitors, to rescind the contract, upon such terms in all respects as the Judge shall direct.

(2). Root of title; earlier title not to be required.

The title shall commence with indentures dated, *&c.* The purchaser shall not, notwithstanding any recital, reference, notice, or covenant for production of or to prior title, be at liberty to investigate or require any explanation, or make any requisition or objection as to any title, or evidence of title, or any other matter whatsoever, prior to the said commencement, or appearing by such recital, reference, notice, or covenant; and the benefit of this condition shall not be waived or affected by the vendor furnishing an abstract of earlier title, or replying to any requisition of, or giving any information to, the purchaser, or by reason of anything being specifically provided for by these conditions; and every abstracted deed or document of title, dated more than twenty years prior to the day of sale, shall be accepted as sufficient evidence of the descriptions and characters of parties, facts, matters, and conclusions of law recited, stated, implied or assumed therein.

(3). Proceedings in suit to be conclusive.

All facts or matters admitted or proved in the above-mentioned suit of A. *v.* B., or certified by the Chief Clerk of the Judge to whose Court that suit is attached, shall be deemed thereby conclusively evidenced.

(4). Easements.

The property is believed, and shall be taken, to be correctly described, and is sold subject to all easements (if any) subsisting therein.

(5). Identity of parcels, &c.

The purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendors as the title to such property, upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and of a declaration to be made (if required), at the purchaser's expense, that the property sold is held under the abstracted title; and the purchaser shall not make any objection or requisition founded upon any variance between the present measurements and the quantities stated in the abstracted muniments; and the purchaser shall be deemed to buy with full notice of the state of the property as respects repairs, insurance, party walls, and all other matters.

(6). Expenses to be borne by purchaser.

If the purchaser shall, consistently with these conditions, require an abstract, or the production of any deed or document not in the vendor's possession, or any office, attested, or other copy of, or extract from, any deed or document, whether in the vendors' possession or not, whether for the purpose of verifying the abstract or of accompanying or completing the title, or otherwise, or any affidavit, statutory declaration, certificate, or other evidence, or any further information as to the said suit of A. *v.* B. than the abstract of the bill and decree or order for sale, and any

subsequent orders, or the concurrence in his conveyance of any person other than the vendors, the expense of complying, or endeavouring to comply, with every such requisition shall be borne by the purchaser: who shall also bear the expense of stamping or restamping any unstamped or insufficiently stamped muniments of title, should any such there be (which however is not known to be the case), and of all searches, inquiries, and journeys for any of the above purposes.

(7). Covenants for title.

The purchaser shall not require from any conveying party any other covenant than a covenant that such party has not incumbered, or require for any purpose the concurrence of any person in respect of any beneficial interest bound by the decree or order for sale, or require any such decree or order to be enrolled.

(8). Title deeds; covenants for production.

The purchaser shall be entitled, on the completion of his purchase, to the custody of such of the deeds and muniments of title in the possession of the vendors as relate exclusively to the property sold; and as to such deeds and muniments of title in the possession of the vendors as relate to the property sold, and also to any other property or matter, the same will be retained by the vendors: who will enter into, or procure to be entered into, by some or one of the parties beneficially interested, the usual qualified and defeasible covenant of a trustee with a purchaser for producing and furnishing copies: the deed of covenant to be prepared and perfected by and at the expense of the purchaser, including the expense of perusal and execution for and by the covenantor, and all other necessary parties, if any.

1375.

Certificate, verifying copy of special conditions, as settled by the conveyancing counsel (*j*).

In Chancery.

(*Short title.*)

We [*Or*, I] certify the above [*Or*, within] to be a true copy of the draft conditions of sale as settled by Mr. D., the conveyancing counsel in this cause [*Or*, matter].

E. & F., solicitors for the plaintiff [*or as may be*],

——, 187—.

1376.

Affidavit as to the mode of lotting (*k*).

Formal parts: see ante, No. 9.

1. I have for —— years last past been engaged in the business of an auctioneer and land and estate agent; and for —— years last past I have carried on such business at —— aforesaid; and I have had considerable experience in the mode of lotting and selling land and house property.

2. I know and am well acquainted with the estates situate at

(*j*) See Dan. Pr. 1156. This certificate is usually required, whenever the original draft, as settled by the conveyancing counsel, is not left at Chambers.

(*k*) See Dan. Pr. 1157.

——, in the county of ——, proposed to be sold in this cause, and described in the paper writing marked A., now produced and shown to me (*l*).

3. On the —— day of ——, 187—, I went over the said estates, and made a careful survey thereof, for the purpose of forming an opinion as to the best mode of dividing and allotting the said estates for the said sale thereof.

4. The said paper writing marked A., sets forth a true and correct description of the said estates, to the best of my knowledge and belief, and the mode in which, in my judgment and opinion, it will be desirable to lot and divide the same for the purposes of the said sale.

5. In my judgment and belief the said estates will be sold to the most advantage, and will be likely to realise the best prices, if the scheme of division and allotment set forth in the said paper writing marked A. be adopted.

6. The —— day of ——, 187—, at (5 for 6) of the clock in the evening, and the —— Hotel at ——, in the county of ——, will be a desirable and convenient time and place for the said sale.

1377.

Affidavit of fitness of proposed auctioneer (*m*).

Formal parts: see ante, No. 9.

1, I have for —— years last past known and been well acquainted with L. M., of (*residence and addition*), auctioneer and land and estate agent; and during all that time the said L. M. has carried on business as an auctioneer and land and estate agent at——, aforesaid [*or as may be*].

2. I have on several occasions employed the said L. M. as an auctioneer and land valuer; and am also acquainted with several persons who are in the habit of employing him in that capacity; and he has invariably given entire satisfaction to me, and I believe also to such other persons.

3. The said L. M. is a person of respectability and integrity, and of considerable ability as an auctioneer and land and estate agent; and in my judgment he is a fit and proper person to be employed to sell the estates situate at ——, in the county of ——, proposed to be sold in this cause [*Or*, matter].

1378.

Advertisement of the sale (*n*).

To be sold, pursuant to a decree [*Or*, order] of the High Court of Chancery made in a cause Jones *v.* Brown [*or as may be*], with the approbation of the Master of the Rolls [*Or*, the Vice-Chancellor] ——, by Mr. L. M., the person appointed by the said Judge, at the —— Hotel, at ——, in the county of ——, on

(*l*) Exhibit same. For form of memorandum thereof, see *ante*, No. 43.

(*m*) See Dan. Pr. 1157. This affidavit appears to be only required in cases where the competency of the auctioneer is not known at the Judge's Chambers: see *ib.*

(*n*) See Dan. Pr. 1157. As to the fee payable on the advertisement, see *ante*,

——, the —— day of ——, 187—, at (5 for 6) o'clock in the evening, in —— lots, certain freehold (*Describe the property shortly : see* No. 1371, *ante*). Particulars and conditions of sale may (*Conclude as in* No. 1371, *ante*). Dated (*&c. : Conclude as in* No. 1232, *ante*).

1379.

Affidavit as to the amount to be fixed for the reserved biddings (*o*).

Formal parts : see ante, No. 9.

1. I have carefully examined and surveyed the estates particularly described in the printed particulars of sale marked A., now produced and shown to me (*p*), in order to form an opinion as to the value thereof, and the amounts which the said estates ought to realise on the sale thereof advertised to take place on the —— day of ——, 187—.

2. I have, in the paper writing marked B., now produced and shown to me (*q*), set forth, in the first column, the number of the lots into which the said estates have been divided for the purposes of the said sale ; and in the second column, opposite the numbers of the said lots respectively, the full values of the said lots respectively ; and in the third column, opposite the said numbers respectively, the amounts which, in my judgment and belief, should be fixed as the reserved biddings for the said lots respectively on the said sale.

1380.

Valuation (B) referred to in No. 1379 (*r*).

In Chancery.

B.

(*Short title.*)

This paper writing marked B. was produced and shown to L. M., and is the paper writing so marked, referred

No. 1211, n. (*s*) ; and as to the signature thereto, and insertion thereof, see *ante*, No. 1232, n. (*g*). For form of advertisement of a sale by tender, see *post*, No. 1409.

(*o*) See Dan. Pr. 1158. As to the reserved bidding, and the mode of ascertaining and fixing the same, see *ib.* ; and *ante*, No. 1373(2).

(*p*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*q*) *Ibid.* Care must be taken to refer to the valuation as an exhibit : so that neither the value of any lot, nor the price which, in the opinion of the deponent, it ought to fetch at the sale, may be disclosed by the affidavit when filed : Regul. 8 Aug. 1857, r. 13 ; Dan. Pr. 1158. Should this rule be neglected, either the affidavit should not be filed : in which case the original must be used at Chambers, instead of an office copy : or another affidavit, complying with the rule, must be obtained : Dan. Pr. 1158, n. (*a*).

(*r*) See Dan. Pr. 1158.

to in his affidavit sworn in this cause [*Or*, matter] on the —— day of ——, 187—, before me:

E. F., a Commissioner, &c. [*or as may be: see ante*, No. 12].

No. of Lot.	Value.	Proposed reserved bidding.
	£	£
1	2000	1850
2	500	450

L. M.

1381.

Summons for leave to bid at the sale (*s*).

Formal parts: see ante, No. 60.

on the part of the plaintiff,

Or, of the defendant—*Or*, of X. Y.: who has liberty to attend the proceedings—*or as may be*,

that he may be at liberty to bid at the sale directed by the decree [*Or*, order] dated the —— day of ——, 187—, of the estates therein mentioned.

1382.

Certificate, verifying print of particulars and conditions (*t*).

In Chancery.

(*Short title.*)

We [*Or*, I] certify the above [*Or*, within] to be a correct print of the particulars and conditions of sale, as settled in the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], in this cause [*Or*, matter].

E. & F., solicitors for the plaintiff [*or as may be*],

——, 187—.

(*s*) See Dan. Pr. 1159, 1160. For order in like case, see Seton, 1182, No. 3.

(*t*) See Dan. Pr. 1159.

1383.
Recognizance, as security for deposits (*u*).

L. M. (*the principal*), of (*residence and addition*), C. D., of, *&c.*, and E. F., of *&c.*, (*the sureties* (*x*)), before our Sovereign Lady the Queen in Her High Court of Chancery personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to the Right Honourable John Lord Romilly, the Master of the Rolls, and The Honourable Sir John Stuart, knight, the senior Vice-Chancellor of the said Court, the sum of £—— (*y*), of good and lawful money of Great Britain: to be paid to the said John Lord Romilly, and Sir John Stuart, or one of them, or the executors, or administrators of them, or one of them; and unless they do pay the same, they the said L. M., C. D., and E. F. are willing and do grant, and each of them is willing and doth grant, for himself, his heirs, executors, and administrators, that the said sum of £—— shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels of them and each of them, wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith and so forth, at Westminster, the —— day of ——, in the —— year of Her reign (*z*), and in the year of our Lord, 187—.

(*Short title.*)

The Master of the Rolls [*Or*, Vice Chancellor——], the Judge to whose Court this cause [*Or*, matter] is attached, has approved of, and allowed, this recognizance.

R. M., Chief Clerk.

Whereas by a decree [*Or*, an order] of the High Court of Chancery, made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], in a cause wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

(187—, B. No. ——),

Or, in a certain matter there depending, intituled "In the matter of ——,"

and dated the —— day of ——, 187—, it was ordered that the real and leasehold estates of G. H., the testator in the said cause

(*u*) See Dan. Pr. 1156, 1158; and *ante*, No. 1373(4). As to the security to be given for deposits, see Dan. Pr. 1156, 1158; Ord. 16 July, 1851, r. 3: 14 Beav. xiv.; Ord. XXXV. 61; and as to enrolling, and vacating the enrolment, of a recognizance, Dan. Pr. 1159. The recognizance must be engrossed on parchment; but it is not now chargeable with any stamp duty.

(*x*) Where, as often happens, one surety is deemed sufficient, the form must, of course, be varied accordingly.

(*y*) This should be double the probable amount of the deposits: Dan. Pr. 1159.

(*z*) See *ante*, No. 278, n. (*d*).

[*or as may be directed by the decree or order*], should be sold, with the approbation of the Judge: And whereas the said estates have been ordered by the Master of the Rolls [*Or*, the said Vice-Chancellor], the Judge to whose Court the said cause [*Or*, matter] is attached, to be sold on the —— day of ——, 187—; and by one of the conditions of such sale, approved by the said Judge, it is provided, that each purchaser, shall, immediately after the sale, pay into the hands of the said L. M. (the person appointed by the said Judge to receive the same,) a deposit of £— per cent. on the amount of his purchase money: And whereas the said Judge has directed the said L. M. to give security that he will duly account for all monies to be received by him by virtue of the said condition; and has approved of the above bounden C. D. and E. F. as sureties for the said L. M.; and has also approved of the above written recognizance, with the under written condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said order, and the Consolidated General Orders of the High Court of Chancery in that behalf; and in testimony of such approbation, the Chief Clerk of the said Judge has signed an allowance in the margin hereof:

Now the condition of the above written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall receive on account of the purchase monies of the said estates, or any part thereof;

If it is intended that the recognizance shall extend to any future sale, add: at the said sale; or, in case the said estates, or any part thereof, shall not be sold at the said sale, then also for all and every the sum and sums of money which the said L. M. shall receive on account of the said purchase monies of the estates, or any part thereof, at any subsequent sale or sales (*a*);

and do and shall duly pay the same in such manner, and at such time or times, as the said Judge has directed, or shall hereafter direct: then the above recognizance shall be void and of none effect: otherwise the same is to be and remain in full force and virtue.

L. M. } Taken and acknowledged by the above named L. M.,
C. D. } C. D., and E. F., at ——, in the (county) of ——,
E. F. } this —— day of ——, 187—,
before me,

(*Signature, and style of office, of officer or commissioner by whom the recognizance is taken: see ante*, No. 12.)

1384.

Affidavit of the sureties, as to their solvency (*b*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, C. D., of (*residence and addition: as in the recognizance*),

(*a*) See Dan. Pr. 1163, n. (*y*).

(*b*) *Ibid.* 1159. Where one surety is deemed sufficient, this form must be varied accordingly.

and E. F., of, *&c.*, the proposed sureties that L. M., of (*residence and addition of the principal: as in the recognizance*), will duly account for the deposits to be received by him on the sale in this cause [*Or*, matter], severally make oath and say as follows :—

1. First, I the said C. D., for myself say, that I am, after payment of all my just debts and liabilities, well and truly worth the sum of £—— (*Insert the amount for which he is to be bound by the recognizance*).

2. And I the said E. F., for myself say, that I am (*Continue as in par.* 1, *to the end*).

Sworn (*&c.: see ante*, No. 13).

1385. Summons for payment or transfer into Court of a security fund, instead of giving a recognizance (*c*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that A. B., the person appointed to receive the deposits payable by the purchasers on the sale, on the —— day of ——, 187—, directed by the decree [*Or*, order] dated the —— day of ——, 187—, may be at liberty, on or before the —— day of ——, 187—, to pay the sum of £A, into the bank, with the privity of the Accountant-General, to the credit of

Or, to transfer the sum of £B, bank £3 per cent. annuities [*or as may be*], into the name of the Accountant-General, in trust in,

this cause [*Or*, matter], "Security for deposits account," as security for the deposits to be received by him as aforesaid :

If it is desired to invest the cash, or the interest to accrue on the stock (*d*), *add*: and that the said £A [*Or*, the interest to accrue on the said annuities] may be laid out in bank £3 per cent. annuities [*or as may be*], on the like credit :

subject to further order.

1386. Directions to auctioneer, as to the conduct of a sale in several lots, where there are reserved biddings (*e*).

Commence as in No. 1263, *ante*.

Mr. L. M., the person appointed to sell the estates advertised for sale in this cause [*Or*, matter], is requested to attend to the following directions :—

R. M., Chief Clerk.

The sale is to be conducted in accordance with the accompanying printed particulars and conditions, signed by the Chief Clerk (*f*). This print is to be carefully preserved, and returned to the Judge's Chambers : with the affidavit of the result of the sale (*g*).

(*c*) See Dan. Pr. 1159. For orders, in like case, for payment in of cash, see *Wells* v. *Hall*, V. C. B. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2292; and Seton, 1188; and for transfer of stock, see *Strong* v. *Hart*, M. R. at Chambers, 23 Mar. 1869, Reg. Lib. B. 700. For the mode of paying money into Court, see Dan. Pr. Chap. XL.; and see *post*, Chap. XL.

(*d*) See Dan. Pr. 1159.

(*e*) *Ibid.* 1160.

(*f*) See *ante*, No. 1382.

(*g*) See *post*, No. 1389.

The sale is to be subject to the reserved bidding specified in the accompanying note (*h*). This note is not to be opened till the time of sale. The reserved bids are not to be divulged to any person, either at, or at any time after, the sale (*i*).

In case there is no bidding for any lot equal to, or higher than, the reserved bid, the person appointed to sell is to declare that such lot is not sold, but has been bought in on account of the persons interested in, or entitled to, the property (*k*).

The accompanying bidding-paper (*l*) is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column, opposite the number of such lot. When, although there is a bidding, the lot is not sold, the words "not sold" are to be written in the third column. The purchasers are to sign their names in the third column, and any person who purchases as agent for another must so sign: otherwise he must be treated as the purchaser (*m*). The purchaser's address and quality are to be fully stated in the fourth column.

When the purchaser's signature is not plain, or initials are used, a note must be put at the foot of the bidding-paper, as follows: "The name of the purchaser of lot —— is ——" (*n*).

1387.

Note of the reserved biddings (*o*).

Commence as in No. 1263, *ante.*

The reserved biddings fixed by the Master of the Rolls [*Or*, Vice-Chancellor ——], to which the sale in this cause [*Or*, matter] is to be subject, are as follows, viz.:—

For Lot 1	£800
For Lot 2	£250
For Lot 3	£300
For Lot 4	£700

(*h*) See Dan. Pr. 1158; Ord. 16 July, 1851, r. 2: 14 Beav. xiii.; Ord. XXXV. 61; Sugd. V. & P. 96; and *post*, No. 1387.

(*i*) See Dan. Pr. 1161.

(*k*) *Ibid.*; Ord. 16 July, 1851, r. 2: 14 Beav. xiii.; Ord. XXXV. 61.

(*l*) See *post*, No. 1388.

(*m*) As to getting the principal substituted for the agent, where this direction has not been followed, see Dan. Pr. 1161, n. (*f*).

(*n*) Insert the name in full, and plainly.

(*o*) See Dan. Pr. 1160; and *ante*, No. 1386. The blanks in this and succeeding forms have been filled up, as guides only in using forms of the like nature

For Lot 5	£650
For Lot 6	£710

R. M., Chief Clerk.

1388.
Bidding paper, on a sale in several lots (*p*).

In Chancery.

B.

(*Short title of the cause or matter.*)

This bidding paper, marked B., was produced and shown to L. M,, and is the same as is referred to in his affidavit sworn this —— day of ——, 187—, before me, E. F., a commissioner, &c. [*or as may be : see ante*, No. 12].

We whose names are hereunder subscribed respectively bid at the sale by auction in the above cause [*Or*, matter] on the —— day of ——, 187—, the sums set opposite to our respective names for, and became the purchasers of, the respective lots specified in the particulars produced at such sale, the numbers of which are set opposite to our respective names, subject to the conditions also produced at such sale.

No. of Lot.	Amount of highest bidding.	Signatures of the purchasers of the lots sold.	Purchaser's address and quality.
1	£900	Edward Thornton .	Epping, Essex, Farmer.
2	£200	Not sold.	
3	No bidding.		
4	No bidding.		
5	£500	Not sold.	
6	£750	Arthur Cuthbertson, agent for T. E. Masson (*q*).	Ilford, Essex, Esquire.

Note.—The name of the purchaser of Lot 6 is Thomas Edward Masson.

(*p*) See Dan. Pr. 1156, 1160, 1161 ; and *ante*, Nos. 1373(3), 1386.
(*q*) See Dan. Pr. 1161 ; and *post*, No. 1404.

1389.
Affidavit of result of a sale in several lots (*r*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

I, L. M., of (*residence and addition*), the person appointed by the Judge to whose Court this cause [*Or*, matter] is attached to sell the estates comprised in the particulars hereinafter referred to, make oath and say as follows:—

1. I did, at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me and marked with the letter A (*s*), put up for sale by auction the estates described in such particulars; and the result of such sale is truly set forth in the bidding-paper marked with the letter B. now produced and shown to me (*t*).

2. *If any lots were sold, say:* The sums set forth in the second column of such bidding-paper are the highest sums bid for the respective lots the numbers of which are set forth in the first column, opposite to such respective sums; and the persons whose names are subscribed in the third column of such bidding-paper as purchasers, were respectively the highest bidders for, and became the purchasers of, the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding-paper, at the prices or sums set opposite to their respective names in the said second column thereof.

3. *If any lots were bid for, but not sold, add:* The several lots opposite to the numbers of which I have, in the third column of the said bidding-paper written the words "not sold," were not sold: no person having bid a sum equal to, or higher than the reserved bidding fixed by the said Judge.

4. *If any lots were not bid for, add:* No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding-paper written the words "no bidding."

5. *In every case, add:* The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

6. *If a deposit was paid* (*u*), *add:* I have received the sums set forth in the fourth column of the schedule hereto, as deposits from the respective purchasers whose names are set forth in the second column of such schedule, opposite the said respective sums, in respect of their respective purchase-monies set forth in the

(*r*) See Dan. Pr. 1160, 1161; and see *ante*, No. 1386. For the above form, see Regul. 8 Aug. 1857, Sched. No. 8. An office copy of the affidavit, together with the exhibits, must be left at the Judge's Chambers at least one clear day before the day appointed by the conditions for settling the certificate of the result of the sale: in order that the certificate may be prepared in due time; and these papers must be so left, although no part of the property has been sold at the auction: see *ib.* r. 15; Dan. Pr. 1161; and see *ib.* 1162, n. (*i*); and *ante*, No. 1373(5).

(*s*) Exhibit the print signed by the Chief Clerk: see *ante*, No. 1386.

(*t*) See *ante*, No. 1388.

(*u*) See *ante*, No. 1373(4).

third column of the said schedule, opposite such names, for the respective lots the numbers of which are set forth in the first column of the said schedule opposite to such respective names; leaving due in respect of the purchase-monies set forth in the said third column the respective sums set forth in the fifth column of the said schedule.

The schedule above referred to.

No. of Lot.	Name of purchaser.	Amount of purchase-money.	Amount of deposit received.	Amount remaining due.
		£	£	£
1	Edward Thornton . .	900	90	810
6	Thomas Edward Masson .	750	75	675
	Totals . £	1650	165	1485

Sworn (*&c.: see ante*, No. 12).

1390. Chief Clerk's certificate of result of a sale in several lots (*x*).

Title, and introduction: see post, No. 1511.

The real estates of A. B., the testator in the said decree [*Or*, order] dated the —— day of ——, 187—, named, and thereby [*or as may be*] directed to be sold, have been offered for sale in six lots by public auction, with the approbation of the said Judge, subject to a reserved bidding for each lot, fixed by the said Judge, and according to certain particulars and conditions of sale; and the several persons named in the first column of the first schedule hereto were the highest bidders for, and they are allowed by the said Judge to be the purchasers of, the respective lots set opposite to their respective names in the second column of the said first schedule, at the prices or sums set opposite to their respective names in the third column of the said first schedule.

The purchasers have paid the several sums set opposite their respective names in the fourth column of the said schedule, as deposits to L. M., the person appointed by the said Judge to receive the same: such sums being the amounts fixed by the said Judge to be paid as deposits by the purchasers respectively at such sale; and the several sums set opposite the respective names of such purchasers in the fifth column of the said schedule remain due from the said purchasers respectively, as the balance of their respective purchase monies. The said several sums mentioned in the fourth column of the said schedule, which have been received by the said L. M., amount together to the sum of £165:

(*x*) See Dan. Pr. 1162; and *ante*, No. 1373 (5). As to the completion of the certificate, see Dan. Pr. 1162.

which sum of £165 the said L. M. is, on or before the —— day of ——, 187— (*y*), to pay into the bank, with the privity of the Accountant-General, to the credit of this cause, "Proceeds of sale of testator's real estates" [*or as may be*].

The purchaser of the lot numbered 6 is T. E. M., a defendant to this suit: an order dated the —— day of ——, 187—, having given him liberty to bid (*z*).

No person bid for either of the lots numbered 2 and 5 a price equal to, or higher than, the sum fixed as the reserved bidding; and therefore such lots were not sold at such auction.

No person bid for either of the lots numbered 3 and 4.

The particulars of the lands and hereditaments comprised in the respective lots so sold as aforesaid are set forth in the second schedule hereto.

Or, are set forth in the exhibit marked A. to the affidavit of L. M. filed the ——, 187— (*a*), and which exhibit is to be filed with this certificate.

The evidence produced, &c.

The (first) schedule above referred to.

Name and address of the purchaser.	No. of Lot.	Price.	Deposit.	Balance remaining unpaid.
		£	£	£
Edward Thornton, of Epping, Essex, Farmer.	1	900	90	810
Thomas Edward Masson, of Ilford, Essex, Esquire	6	750	75	675
	Totals	1650	165	1485

[The second schedule above referred to.
Set out the particulars of each lot sold: as in the printed particulars of sale (*b*).]

(*y*) See Dan. Pr. 1162; Ord. 16 July, 1851, r. 3: 14 Beav. xiv.; Ord. XXXV., 61. As to the course, where default is made in payment, see Dan. Pr. 1162; and *post*, No. 1405.

(*z*) As to the course where a party to the suit bids without leave, see Dan. Pr. 1160; and *post*, No. 1404.

(*a*) This is the print signed by the Chief Clerk: see *ante*, Nos. 1382, 1389.

(*b*) This schedule is, of course, omitted where, as frequently happens in practice, the printed particulars are filed with the certificate.

1391.
Directions to the auctioneer, as to the conduct of a sale in several lots, without reserve (*c*).

Commence as in No. 1386, *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk (*d*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*e*).

The accompanying bidding-paper (*f*) is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column opposite the number of such lot.

The purchasers are to sign their names (*Conclude as in* No. 1386, *ante*).

1392.
Bidding-paper, in like case (*g*).

The same as No. 1388, *ante:* omitting all reference to the lots bid for, but "not sold."

1393, 1394.
Affidavit, and Chief Clerk's certificate, of result of the sale, in like case (*g*).

These forms can readily be prepared from Nos. 1389, 1390, *ante.*

1395.
Directions to auctioneer, as to the conduct of a sale in one lot, where there is a reserved bidding (*h*).

Commence as in No. 1386, *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk (*i*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*k*). The sale is to be subject to the reserved bidding specified in the accompanying note (*l*). This note is not to be opened till the time of sale. The reserved bid is not to be divulged to any person, either at or at any time after the sale (*m*).

In case there is no bidding equal to, or higher than, the reserved bid, the person appointed to sell is to declare that the

(*c*) See Dan. Pr. 1158, 1161; and notes to No. 1386, *ante.*
(*d*) See *ante,* No. 1382.
(*e*) See *ante,* No. 1389; and *post,* No. 1393.
(*f*) See *post,* No. 1392.
(*g*) See Dan. Pr. 1160—1162; and *ante,* No. 1391.
(*h*) See Dan. Pr. 1161; and notes to No. 1386, *ante.*
(*i*) See *ante,* No. 1382.
(*k*) See *post,* No. 1398.
(*l*) *Ibid.,* No. 1396.
(*m*) See Dan. Pr. 1161.

property is not sold, but has been bought in on account of the persons interested in, or entitled to, the property.

The accompanying bidding-paper (*n*) is to be carefully filled up.

The purchaser is to sign his name at the foot of the bidding-paper; and any person who purchases as agent for another must so sign: otherwise he must be treated as the purchaser.

The purchaser's christian and surnames, address, and quality, are to be fully stated in the bidding-paper.

1396.

Note of the reserved bidding, on a sale in one lot (*o*).

Commence as in No. 1263, *ante.*

The reserved bidding fixed by the Master of the Rolls [*Or*, Vice-Chancellor ——], to which the sale in this cause [*Or*, matter] is to be subject, is the sum of £280.

R. M., Chief Clerk.

1397.

Bidding-paper, in like case (*o*).

In Chancery.

B.

(*Short title of the cause or matter.*)

This bidding-paper, marked B., was produced and shown to L. M., and is the same as is referred to in his affidavit sworn this —— day of ——, 187—, before me,

E. F., a commissioner, &c. [*or as may be: see ante*, No. 12.]

I, the undersigned G. H., of —— (*p*), bid at the sale by auction in the above cause [*Or*, matter] on the —— day of ——, 187—, the sum of £300 for, and became the purchaser of, the property specified in the particulars produced at such sale, subject to the conditions also produced at such sale.

G. H.

1398.

Affidavit of result of the sale, in like case (*q*).

Proceed as in No. 1389, *ante, to*, as follows:—

1. I did at the time and place, and subject to the conditions, specified in the particulars and conditions of sale, marked A., now produced and shown to me (*r*), put up for sale by auction, in one lot, the estate described in such particulars.

If a sale was effected, add: 2. The sum of £300 set forth in the bidding-paper, marked B., now produced and shown to me (*s*),

(*n*) See *post*, No. 1397.

(*o*) See Dan. Pr. 1156, 1160; and *ante*, No. 1373 (3).

(*p*) Insert the purchaser's name, address, and quality, at length.

(*q*) See Dan. Pr. 1160, 1161; and *ante*, No. 1395.

(*r*) This exhibit is to be the print signed by the Chief Clerk: see *ante*, No. 1395.

(*s*) See *ante*, No. 1397.

was the highest sum bid for the said estate; and G. H., whose name is subscribed to the said bidding-paper, was the highest bidder for, and became the purchaser of, the said estate, at the said sum of £300.

But if the highest bidding was below the reserve, say: 2. The sum of £250 was the highest sum bid for the said estate; and the said estate was therefore not sold: the said sum being less than the reserved bidding fixed by the said Judge.

Or, if there was no bidding whatever, say: 2. No person bid any sum whatever for the said estate.

In every case, add: 3. The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

If a deposit was paid, add: 4. I have received from the said G. H. the sum of £30, as a deposit in respect of the said purchase money of £300: leaving due from him, in respect of his said purchase money, the sum of £270.

Sworn (*&c.: see ante*, No. 12).

1399. Chief Clerk's certificate of result of a sale in one lot, where there was a reserved bidding (*t*).

Proceed as in No. 1390, *ante, to* directed to be sold, have been offered for sale in one lot by public auction, with the approbation of the said Judge, subject to a reserved bidding fixed by the said Judge, and according to certain particulars and conditions of sale; and G. H., of (*&c.: as in bidding-paper*), was the highest bidder for, and he is allowed by the said Judge to be the purchaser of, the said estate at the price or sum of £300.

The said G. H. has paid the sum of £30, by way of deposit, to L. M., the person appointed by the said Judge to receive the same; and who is to pay such sum of £30 into the bank, with the privity of the Accountant-General, to the credit of this cause "Proceeds of sale of testator's real estate" [*or as may be*], on or before the —— day of ——, 187—; and there is due from the said G. H., as the balance of his purchase money, the sum of £270.

The particulars of the hereditaments so sold as aforesaid are set forth in the schedule hereto [*or as may be—see ante*, No. 1390].

The evidence produced, &c.

[The schedule above referred to.

(*Set out the particulars of the property sold: as in the printed particulars of sale*).]

(*t*) See Dan. Pr. 1162; and notes to No. 1390, *ante*.

1400.
Directions to the auctioneer, as to the conduct of a sale in one lot, without reserve (*u*).

Commence as in No. 1386, *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk. This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*x*).

The accompanying bidding-paper (*y*) is to be carefully filled up.

The purchaser is to sign his name (*Conclude as in* No. 1395, *ante*).

1401.
Bidding-paper, in like case (*z*).

The same as No. 1397, *ante.*

1402, 1403.
Affidavit, and Chief Clerk's certificate, of result of the sale, in like case.

These forms can readily be prepared from Nos. 1398, 1399, *ante.*

1404.
Summons, that a party who bid without leave at a sale may be accepted as purchaser (*a*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that notwithstanding the applicant had not obtained leave to bid at the sale on the —— day of ——, 187—, of the estates directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—, he may be certified to be the purchaser of the said estates [*Or*, of lot —— of the said estates] at the sum of £——: the price at which he was declared to be the highest bidder for the said estates [*Or*, lot] at such sale.

1405.
Summons, to compel payment in of deposits received at the sale (*b*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that L. M., in the Chief Clerk's certificate [*Or*, in the order] dated the —— day of ——, 187—, named, may be ordered, on or before the —— day of ——, 187—, or within seven days after service, to pay the sum of £——: appearing by the said certificate [*Or*, order—*Or*, by the affidavit of E. F., filed the ——, 187—] to have been received by him as deposits from the purchasers therein named, on the lots therein mentioned [*or as may be*]: into the bank, to the credit of

(*u*) See Dan. Pr. 1160; and notes to No. 1386, *ante.*
(*x*) See *post,* No. 1402.
(*y*) *Ibid.,* No. 1401.
(*z*) See Dan. Pr. 1165; and *ante,* No. 1400.
(*a*) See Dan. Pr. 1160.
(*b*) *Ibid.,* 1162. For order in like case, see Seton, 1183, No. 5. For the mode of enforcing the order, see *ante,* No. 922, *et seq.*

this cause [*Or*, matter], "Proceeds of sale of testator's real estate," [*or as may be*], subject to further order. And that the said L. M. may be ordered to pay the costs of this application.

1406. Summons to vacate recognizance, or pay out security fund, for deposits (*c*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*or as may be*], that the recognizance dated the —— day of ——, 187—, entered into by L. M., together with C. D. and E. F. as his sureties, may be vacated.

Or, that the £——, cash in the bank,

Or, £——, bank £3 per cent. annuities [*or as may be*], remaining

on the credit of this cause [*Or*, matter], "Security for deposits account" [*or as may be*], may be repaid [*Or*, retransferred] to the said L. M.

1407. Summons to proceed with the sale of unsold lots (*d*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*or as may be*], to proceed with the sale of the unsold portions of the real estates of the testator [*or as may be*] directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—.

1408. Particulars and conditions of a sale, by tender, of partnership property, together with the goodwill (*e*).

In Chancery.

(*Johnson* v. *Helleley*.)

PARTICULARS AND CONDITIONS OF SALE

of extensive and newly-built freehold warehouses, cottages, offices, land, and premises, situate at W., in the county of Y., with a water frontage to the D. canal of 97 feet: together also with the goodwill of the extensive and old established business of wine and spirit merchants, for many years carried on by the late well known firm of E. F. & Co., upon the said premises; and also all

(*c*) See Dan. Pr. 1163. The application must be supported by production of an office copy of the Chief Clerk's certificate of the result of the sale, and of the recognizance where given; and the Accountant-General's certificate of the payment into Court of the deposit, if any, and, in the case of a security fund, of such fund being in Court. A separate application for this order is unusual: as an opportunity will generally occur for engrafting it on some other application in the suit: see Dan. Pr. 1163, n. (*s*). Where the recognizance has not been enrolled, no order to vacate the enrolment is, of course, necessary, but the recognizance will be delivered out, on production of office copies of the certificates above mentioned: *ib.*

(*d*) See Dan. Pr. 1163. For the practice as to a re-sale, see *ib.*

(*e*) This form follows the particulars and conditions used in *Johnson* v. *Helleley*, 34 Beav. 63; 2 De G. J. & S. 446. As to sales by tender, see Dan. Pr. 1153, 1163. For forms of particulars and conditions, on an ordinary sale by public auction, see *ante*, Nos. 1371, 1373, 1374, and notes thereto.

the excellent trade fixtures and other conveniences for carrying on an extensive business:

To be sold, in one lot, by private tender, by order of his lordship the Master of the Rolls.

The purchaser is also to take at a valuation: to be made in the mode directed by the conditions of sale hereto annexed, subject to which the said property is sold: all the large, valuable, and carefully selected stock of wines, spirits, &c., now belonging to the said firm; and also, at a sum already fixed by the Master of the Rolls, certain book debts due and owing to the said firm: the amount whereof due on the —— day of ——, 186—, may be ascertained upon reference to the solicitors named below; and the amount whereof due since that day is to be ascertained as provided by the 5th condition of sale.

The sale will give to the purchaser both the premises in which the business has been carried on, and the benefit to be derived from the habits of the customers resorting to such premises; but it will not prevent any of the persons heretofore interested in the business, or those who may represent them, from carrying on the like business.

Tenders to be sent (in a sealed cover) to the Chief Clerk of the Vice-Chancellor Sir John Stuart (acting for the Master of the Rolls), at his Chambers, situate, &c., not later than the —— day of ——, 186—.

Particulars, plans, conditions of sale, and forms of tender, may be obtained, gratis, of Messrs. S. and B., solicitors, at S.; of Messrs. T. and H., solicitors, at, *&c.*, *&c.*

The premises may be viewed, and approximate catalogues of the stock obtained, on application to the said Messrs. S. and B., *&c.*, *&c.*

CONDITIONS OF SALE.

(1). Reserved bidding.

1. The sale is subject to a reserved bidding: which has been fixed by the Judge to whose Court the cause is attached.

(2). Service on purchaser.

2. The abstract of title, and all written notices, communications, and summonses, are to be deemed duly delivered to, and served upon the purchaser, by being left for him at the address mentioned in the tender: unless, and until, he is represented by a solicitor.

(3). Deposit.

3. The purchaser is, within two days after the acceptance of his tender, to pay a deposit of £10 per cent. on the amount of his purchase money to the London and Westminster Bank, Bloomsbury Branch, to the credit of F. J. D., of *&c.*, and E. W., of *&c.*, as appointed by the Judge.

(4). Certifying result of sale.

4. The Chief Clerk of the Vice-Chancellor Sir John Stuart, the Vacation Judge, acting for the Master of the Rolls, will, after the sale, proceed to certify the result; and ——, the —— day of ——, 186—, at twelve o'clock at noon, is appointed as the time at which the bidders may, if they think fit, attend by their solicitors at the

Chambers of the said Judge, situate at, *&c.*, to settle such certificate. The certificate of sale (if any) will then be settled, and will, in due course, be signed and filed, and become binding, without further notice or expense to the purchaser.

(5). Book Debts: how to be taken.

5. The book debts due to the late partnership on the —— day of ——, 186—, are to be taken by the purchaser at a sum fixed by the Judge; and which may be ascertained upon application to any of the before named solicitors. The book debts accrued due to the said partnership since the said —— day of ——, 186—, shall be taken to by the purchaser, and the amount to be paid by him in respect thereof shall be ascertained by the said Judge in Chambers, or as he shall direct; and in ascertaining such amount, regard will be had to any of the last-mentioned debts which may have been got in since that day. The purchaser shall also have credit for the value at which the Chief Clerk of the said Judge has estimated any of the debts due on the said —— day of ——, 186—, which may have been got in before the completion of the purchase.

(6). Ascertaining value of fixtures, &c.

6. The value of the fixtures, wines, spirits, &c., mentioned in the particulars: which are to be taken at a valuation: shall be ascertained as follows:—Each party (the vendors acting by Messrs. S. & B. their solicitors, and the purchaser by his solicitor), is, within ten days after the Chief Clerk's certificate has become binding, to appoint (*Continued as in par.* 7 *of* No. 1373, *ante, to the end of that par.; and concluded thus:*) In case the said valuers cannot agree upon an umpire, an umpire is to be appointed by the Master of the Rolls, or the said vacation Judge, in Chambers.

[7—13. *Here followed special conditions, applicable to the title to the freehold property.*]

(14). Payment of purchase money.

14. The purchaser is, under an order for that purpose to be obtained by him, or, in case of his neglect, by the vendors at the costs of the purchaser, upon application at the Chambers of the Judge, to pay the remainder of his purchase money into the Bank of England, with the privity of the Accountant-General of the Court of Chancery, to the credit of the cause J. *v.* H., or otherwise as in such order may be provided, within fourteen days, exclusive of vacations, after the date of the valuations to be made as mentioned in the 6th condition; and if the same is not so paid, then the purchaser is to pay interest on the remainder of his purchase money, at the rate of £5 per cent. per annum, from the date of such valuation, to the day on which the same is actually paid: deducting property tax. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession as from the date of such valuation, down to which time all outgoings are to be paid by the vendors; and for the purpose of this condition, such outgoings, if the circumstances so require, shall be apportioned. And the purchaser is to be considered as entitled to the said business, and subject to the engagements thereof, as from the date of the valuation provided for by the 6th

Possession, &c.

condition ; and the amount coming, or being due, to, or from, him in respect thereof as from that day is to be ascertained. In so ascertaining the same, such allowance as may be deemed proper in respect of the management thereof, as from the date of such valuation, is to be made ; and the said Judge shall determine any differences which may arise in reference to this condition, including the determination of, by, and to whom, and when and how, any sum is to be payable thereunder.

(15). Resale on default.

Lastly. If the purchaser shall not pay (*&c.: as in* No. 1373 (10), *ante*).

1409.

Advertisement of a sale by tender (*f*).

To be sold by private tender, pursuant to a decree [*Or*, an order] of his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], made in a cause J. *v.* H. [*or as may be*], all (*Describe the property shortly*).

Tenders are to be sent to the Chief Clerk of the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers, situate in the Rolls' Yard, Chancery Lane, London [*or as may be: see ante*, No. 1123], not later than ——, the —— day of ——, 187—.

Particulars and conditions of sale may (*Conclude as in* No. 1371, *ante*).

1410.

Form of tender (*g*).

In Chancery.

(*Short title of the cause or matter.*)

I, the undersigned A. B., of (*residence and addition*), do hereby tender for, and agree to purchase, subject to the approval of the Master of the Rolls [*Or*, the Vice-Chancellor ——], at the sum of £——, the property comprised in the [*Or*, in lot one, *&c.*, of the] within particulars of sale, and upon the terms and conditions within mentioned, and subject to the conditions of sale within contained.

A. B.

Witness to the signature of the said A. B.,
C. D., of (*residence and addition*).

1411.

Certificate of the result of a sale by tender (*h*).

The certificate is in the same form as the certificate of the result of a sale by public auction : see *ante*, Nos. 1390, 1399 : except that the property is stated to have been offered for sale

(*f*) See Dan. Pr. 1163. For form of advertisement of a sale by public auction, see *ante*, No. 1378 ; and see note to that form.

(*g*) See Dan. Pr. 1163. The tender should be written in the fold of a print of the particulars and conditions of sale. A printed form of tender is usually circulated with the particulars and conditions.

(*h*) See Dan. Pr. 1163.

by tender, and the person allowed the purchaser is stated to have tendered the highest sum.

1412. Summons for delivery of an abstract of title (*i*).

Formal parts: see ante, No. 60.
on the part of A. B. : who by the Chief Clerk's certificate [*Or*, by the order] dated the ——, 187—, has been allowed the purchaser of (lot —— of) the estates directed to be sold by the decree [*Or*, order] dated the ——, 187— : that the plaintiff [*or other person having the conduct of the sale*] may be ordered, on or before the ——, 187—, to deliver to the applicant, or to Mr. C. D., of (*Place of business*), his solicitor, an abstract of the title to the said lot [*Or*, estates] pursuant to the (6th) of the conditions of sale ; and that the said plaintiff [*or other person having the conduct of the sale*] may be ordered to pay to the applicant his costs of this application.

1413. Summons by the purchaser, for leave to pay his purchase money into Court (*j*).

Formal parts: see ante, No. 60.
on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*):

1. That the applicant, being content with the title, may, on or before the —— day of ——, 187—, pay into the bank, to the credit of this cause, "Proceeds of sale of the testator's real estate" [*or as may be: according to the decree or order of sale*], the sum of £——: being the purchase money for the said premises.

Or, being the balance of the purchase money for the said premises, after deducting £—— paid by him as a deposit.

If so: and the further sum of £——: being the amount of the valuation of the timber: making together the sum of £——.

If so: together with £——, for interest on the said £——, at £(5) per cent. per annum, from the ——, 187—, to the ——, 187—: deducting property tax (*k*).

(*i*) See Dan. Pr. 1155, 1156, 1164; and *ante*, No. 1373 (6). As to compelling delivery of the abstract, see Dart, 1094; 1 Davidson's Conv. 507; and as to the consequences of non-delivery, see Dart, 115, 282; 1 Davidson, 456, 503; Sugd. V. & P. 181, 260, 261. As to the investigation of the title, verification of the abstract, and examination of the muniments of title, see Dan. Pr. 1164—1166; Dart, 283, *et seq.*; 1 Davidson, 455—491; 1 Prideaux's Conv. 117—127; Sugd. V. & P. 405—412—423—432; and see *ante*, No. 1372, n. (*h*).

(*j*) See Dan. Pr. 1157, 1164, 1168; *ante*, No. 1373 (8); and *post*, Nos. 1426, 1427. For orders in like case, see *Alderson* v. *Jones*, M. R. at Chambers, 3 June, 1870, Reg. Lib. A. 1303; and Seton, 1192; and for payment in by instalments, see Seton, 1198. The summons must be supported by production of the decree or order directing the sale, an office copy of the Chief Clerk's certificate of the result of the sale, or the order confirming a conditional contract of sale, the conditions or contract of sale, and the valuation of the timber, if any: see Dan. Pr. 1168. An office copy of the Accountant-General's certificate of the payment into Court of any deposit is sometimes also required.

(*k*) The ordinary conditions of sale provide for deduction of the property tax

Or, together with interest on the said £——, at £(5) per cent. per annum, from the ——, 187—, till payment (the amount to be verified by affidavit (*k*)).

2. That, upon such payment being made, the applicant may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187— (*l*); and that all proper parties may be ordered to join in and execute a proper conveyance or assurance of the premises to the applicant, or as he shall direct (*m*): such conveyance or assurance to be settled by the Judge in case the parties differ (*n*).

3. That the said sum of £—— (and interest) may not be paid out without notice to the applicant (*o*).

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from the interest: see *ante*, No. 1373 (8). As to the right of the purchaser to such deduction in the absence of condition, see Dan. Pr. 1169. The following table shows the fluctuations in the amount of the property tax, since its imposition in 1842:—

Act.	Duration. From 5 April.	Duration. To 5 April.	Rate of duty in pence per pound.
5 & 6 Vic. c. 35, and continuing acts, to 16 & 17 Vic. c. 34	1842	1854	Seven.
Same. 17 & 18 Vic. cc. 10, 24	1854	1855	Fourteen.
18 & 19 Vic. c. 20	1855	1857	Sixteen.
20 Vic. c. 6	1857	1858	Seven.
16 & 17 Vic. c. 34	1858	1859	Five.
Same. 22 & 23 Vic. c. 18	1859	1860	Nine.
23 & 24 Vic. c. 14	1860	1861	Ten.
24 & 25 Vic. c. 20	1861	1862	Nine.
25 & 26 Vic. c. 22, s. 42 ...	1862	1863	Nine.
26 & 27 Vic. c. 22	1863	1864	Seven.
27 & 28 Vic. c. 18	1864	1865	Six.
28 & 29 Vic. c. 30	1865	1866	Four.
29 & 30 Vic. c. 36	1866	1867	Four.
30 & 31 Vic. c. 23 ... 31 & 32 Vic. c. 2 ...	1867	1868	Five.
—— c. 28	1868	1869	Six.
32 & 33 Vic. c. 14, s. 5	1869	1870	Five.
33 & 34 Vic. c. 32, s 14 ...	1870	1871	Four.

(*k*) For form of affidavit, see *post*, No. 1415.

(*l*) See Dan. Pr. 1170, 1171; and *ante*, No. 1373 (8).

(*m*) See Dan. Pr. 1164, 1182; Ord. XXXV. 13.

(*n*) As to when the words, "in case the parties differ," should be omitted, see Dan. Pr. 1147. As to the draft conveyance, see *post*, No. 1421.

(*o*) See Dan. Pr. 1176, 1177. As to a direction to invest, which is usually made part of the order on the summons: see Dan. Pr. 1169. As to giving notice of the restraint to the Accountant-General, see *ib.* 1176.

1414. Summons by separate purchasers, for leave to pay in their purchase monies under one order (*q*).

Formal parts: see ante, No. 60.

on the part of A. B., C. D., and E. F.: in the first column of the schedule hereto respectively named; and who by the Chief Clerk's certificate [*Or*, by the order] dated the —— day of ——, 187—, have respectively been allowed the purchasers of the hereditaments comprised in the respective lots, the numbers of which are set opposite their respective names in the second column of the said schedule, being parts of the estates directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—: that the applicants, being respectively content with the title to their respective lots, may, on or before the —— day of ——, 187—, pay into the bank, to the credit of this cause, "Proceeds of sale of the testator's real estate" [*or as may be: according to the decree or order of sale*], the several sums of money set opposite their respective names in the last column of the said schedule: such sums being the amounts of the balances of their respective purchase monies for the lots so purchased by them.

If so: after making the additions and deduction specified in the 4th, 5th, and 7th columns of the said schedule.

2. That, upon such payments respectively being made, the applicants respectively may be let into possession of the premises comprised in the respective lots so purchased by them respectively, or into the receipt of the rents and profits thereof, as from the ——, 187—; and that all proper parties may be ordered to join in and execute proper conveyances and assurances of the said respective premises to the applicants respectively, or as they shall direct: such conveyances and assurances respectively to be settled by the Judge, in case the parties differ (*p*).

3. That the said sums respectively may not be paid out without notice to the respective applicants paying such respective sums into the bank, as aforesaid.

The schedule above referred to.

Name of purchaser.	No. of Lot.	Purchase money.	Deposit paid.	Valuation of timber.	Balance of purchase money added to valuation of timber.	Interest thereon from —, 187—, to —, 187—, at £5 per cent. (deducting property tax).	Amount to be paid into the bank.
		£	£	£	£	£	£
A. B. . .	1	900	90	20	830	30	860
C. D. . .	2	750	75	18	693	25	718
E. F. . .	3	300	30	10	280	10	290

(*p*) See No. 1413, n. (*n*).

(*q*) See Dan. Pr. 1169, and notes to No. 1413, *ante*. For orders in like case,

1415.

Affidavit of amount of interest to be paid in by purchaser (*r*).

Formal parts: see ante, No. 9.

1. Interest at the rate of £(5) per cent. per annum from the —— day of ——, 187—, to the —— day of ——, 187—, on the sum of £——, (balance of) purchase money,

If so: and valuation of timber,

in the order in this cause [*Or*, matter] dated the —— day ——, 187— (*s*), mentioned, amounts (after deducting property tax) to the sum of £——, and no more: as I know from having computed such interest.

2. The said sums of £—— and £—— make together the sum of £——.

1416.

Summons for leave to pay in purchase money, without prejudice (*t*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*): that, without prejudice to any question as to the title to the said premises, the applicant may, on or before the ——, 187—, pay into the bank (*Proceed as in* No. 1413, *to the end of clause* 1; *and add clause* 3).

1417.

Further summons to be let into possession, in like case (*u*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*): that the applicant, having paid into the bank, to the credit of this cause [*or as may be*], the sum of £—— for the purchase money and interest for the said lot [*Or*, estates], pursuant to the order dated the ——, 187—, and now being content with the title to the premises, may be let into the possession of the said premises, or into the receipt of the rents and profits thereof (*Continue as in* No. 1413, *clause* 2, *to the end of that clause*).

1418.

Summons by purchaser, for allowance of compensation out of his purchase money, and to pay in the residue (*v*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*):

1. That, out of his purchase money for the said premises, the

see *Poole* v. *Barker*, M. R. at Chambers, 6 March, 1867, Reg. Lib. B. 458; *Alderson* v. *Jones*, M. R. at Chambers, 3 June, 1870, Reg. Lib. A. 1367; and see Seton, 1193, No. 2.

(*r*) See Dan. Pr. 1168.

(*s*) Order to pay in purchase money and interest: see *ante*, No. 1413.

(*t*) See Dan. Pr. 1170; and *ante*, No. 1373 (8). As to the right of the purchaser to pay in his purchase money without prejudice, see See Dan. Pr. 1169.

(*u*) *Ibid.* 1170.

(*v*) *Ibid.* 1156, 1170; and *ante*, No. 1373 (8. 9). As to compensation, see Dan. Pr. 1170; Dart, 1143, 1144; 1 Davidson's Conv. 493—497; Seton, 1196; Sugd. V. & P. 828.

sum of £—— may be allowed to him as compensation (*State ground of application; as thus:*

by reason of the said premises being described in the particulars of sale thereof as let on an agreement for —— years from the ——, 187—, at an annual rent of £50; whereas the rent reserved by the said agreement is only £45 per annum).

2. *If the purchaser is ready to pay in the balance, add:* That the applicant, being content with the title, may, on or before the ——, 187—, pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, being the residue of the said purchase money, after deducting the said £—— for such compensation—*If so:* and after deducting £—— paid by him as a deposit (*Continue as in* No. 1413, *ante, to the end*).

1419.

Summons by the vendor, for payment of compensation by the purchaser (*w*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or other person having the conduct of the sale*]: that A. B.: who by the Chief Clerk's certificate [*Or*, by the order] dated the ——, 187—, has been allowed the purchaser of (lot —— of) the estates directed to be sold by the decree [*Or*, order] dated the ——, 187—: may be ordered, in addition to his purchase money for the said premises, to pay, in such manner as the Judge shall direct, the sum of £——,

Or, such amount as the Judge shall settle,

as compensation (*State ground of application; as thus:*

by reason of the said premises being described in the particulars of sale as containing by admeasurement 10a. 3r. 24p.: instead of 12a. 2r. 11p.).

1420.

Writ of assistance, to put a purchaser into possession (*x*).

Motion paper for the writ: } The same as Nos. 960, 961, *ante.*
Affidavit in support: }

Præcipe for the writ: }
The writ: } The same as Nos. 962—964, *ante.*
Indorsement thereon: }

1421.

Summons to compel purchaser to leave draft conveyance (*y*).

Proceed as in No. 1419, *ante, to* may be ordered; *and continue thus:*

on or before the ——, 187—, or within four days after service, to leave at my Chambers the draft of the conveyance to him of the said premises: to the intent that such draft may be settled by me pursuant to the order dated the ——, 187—.

(*w*) See *ante*, No. 1418, n. (*v*).

(*x*) See Dan. Pr. 1156, 1172; *ante*, Nos. 1373 (3), 1413; and notes to Nos. 960—964, *ante.*

(*y*) See Dan. Pr. 1173; and *ante*, No. 1413. For order in like case, see *Leach* v. *Westall*, V. C. M. at Chambers, 18 Mar. 1870, Reg. Lib. B. 732. As to the

1422.

Summons by purchaser, to compel return of draft, or engrossment, of conveyance(z).

Formal parts: see ante, No. 60.
on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*): that the plaintiff [*or other party retaining the draft or engrossment*] may be ordered, on or before the ——, 187—, to leave in my Chambers the draft [*Or*, engrossment] of the conveyance to the applicant directed to be settled and executed by the order dated the ——, 187—.

1423.

Settlement of conveyance (a).

See *ante*, Nos. 1357—1365.

1424.

Summons, that a party to the purchaser's conveyance may be ordered to execute the same (b).

Formal parts: see ante, No. 60.
on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*): that the plaintiff C. D. [*or as may be*] may be ordered, within four days after service, to join in and execute the indenture of conveyance in the Chief Clerk's certificate dated the —— day of ——, 187—, mentioned: being a conveyance of the said premises to the applicant, which has been settled pursuant to the order dated the —— day of ——, 187—; and that the said C. D. may be ordered to pay the costs of, and incident to, this application.

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preparation of the conveyance, see Dan. Pr. 1172; Dart, 460—520, 1150, 1151; 1 Davidson's Conv. 499; Sugd. V. & P. 557. As to the parties thereto, see Dan. Pr. 1172; Dart, 1104; 2 Davidson, 248, n. (*f*); Lewin, 752, n. (*c*); 1 Prideaux's Conv. 304, n.; and as to covenants for title, see Dart, 1157, 1158; 1 Davidson, 130—145, 188—203; 1 Prideaux, 170; Sugd. V. & P. 572—615, 835. As to the settlement of the draft of the conveyance at Chambers, see Dan. Pr. 1146, 1173. For precedents of conveyances of estates sold under a decree, see 2 Davidson, 244—270; 1 Prideaux, 304, 307.

(*z*) See Dan. Pr. 1173.

(*a*) *Ibid.*; and notes to Nos. 1357—1365, *ante*. The engrossment should be stamped, before being left at Chambers: Dan. Pr. 1173, n. (*t*). As to the stamp duties on conveyances, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sch.; see also 1 Prideaux's Conv. 179—185; Sugd. V. & P. 566—572. As to searching for incumbrances, see *ante*, No. 1277, and notes thereto. As to succession duty, see 16 & 17 Vic. c. 51; 28 & 29 Vic. c. 104, ss. 53—64; Dart, 1274; 1 Prideaux's Conv. 126, 265, 267; Seton, 1198; Sugd. V. & P. 556; Trevor, 283—366.

(*b*) See Dan. Pr. 1173; and *ante*, No. 1413. For form of indorsement on copy of the order for service, see *ante*, No. 922. For the mode of enforcing the execution of the conveyance to a purchaser, see Dan. Pr. 1174, 1175.

1425.
Attachment, on default (*c*).

Affidavit of service of order, and refusal. } See *ante*, No. 929.
Præcipe for the writ: }
The writ: } The same as Nos. 932—934, *ante*.
Indorsement thereon: }

1426.
Summons by purchaser, to pay in his purchase money, and for the appointment of a person to convey to him (*d*).

Proceed as in No. 1413, *ante, to end of clause* 1.

2. That, upon such payment being made, the applicant may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187—.

3. That C. D., of (*residence and addition*), may be appointed to convey the said premises to the applicant, or as he shall direct, for the estate of the infant defendant E. F. [*or as may be*] therein (*e*): the conveyance or assurance thereof to be settled by the Judge—*Add, when applicable:* in case the parties differ.

4. That forthwith after payment in of the said sum of £——, as aforesaid, the said C. D. may convey the said premises accordingly.

5. That the said sum of £—— may not be paid out without notice to the applicant.

1427.
Summons by purchaser, to pay in his purchase money, and for a vesting order (*f*).

Proceed as in No. 1426, *ante, to the end of clause* 2.

3. That forthwith, after the payment in of the said sum of £—— as aforesaid, the said premises may vest in the applicant for the estate of the infant defendant E. F. [*or as may be*] therein.

4. That the said sum of £—— may not be paid out without notice to the applicant.

1428.
Summons for delivery, by the Record and Writ Clerk, of documents to a purchaser (*g*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the deeds and writings specified in the schedule hereto, being the [*Or*, part of the] documents deposited with the Clerk of Records and Writs

(*c*) See Dan. Pr. 1174; and notes to Nos. 929, 932—934, *ante*.

(*d*) See Dan. Pr. 1173, 1174; and notes to No. 1413, *ante*. As to vestin orders, and orders appointing persons to convey, under the Trustee Acts, 1850, and 1852, see Dan. Pr. 1174; *ib.* Chap. XLV. s. 4; and *post*, Chap. XLV. s. 4.

(*e*) In addition to the evidence required on an ordinary application to pay in: see *ante*, No. 1413, n. (*j*): evidence must be produced to show that the estate is vested as alleged, and the grounds on which the order is sought: Dan. Pr. 1175.

(*f*) For order in like case, see *Irons* v. *Blyton*, M. R. at Chambers, 21 Nov. 1866, Reg. Lib. A. 2520; and *ante*, No. 1426, nn. (*d*), (*e*). As to the stamp duty on a vesting order, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sch.; and Dan. Pr. 1175, n. (*l*).

(*g*) See Dan. Pr. 1176. For orders in like case, see *Cross* v. *Maltby*, V. C. K.

by the defendant C. D. [*or as may be*] under an order dated the ——, 187—, may be delivered out to A. B., a purchaser under the decree [*Or*, order] dated the —— day of ——, 187—, of the [*Or*, part of the] estates to which the said deeds and writings relate, or to whom he shall appoint.

The schedule above referred to.

(*Describe the documents, as in order or affidavit of deposit.*)

1429.

Petition of course, for the like, by consent (*h*).

Title—and address to the M.R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Pursuant to an order in this cause [*Or*, matter] dated the —— day of ——, 187—, the Defendant C. D. [*or as may be*] deposited in the office of the Clerk of Records and Writs certain documents therein specified [*Or*, specified in his affidavit filed in this cause (*Or*, matter) on the —— day of ——, 187—].

2. On a sale made pursuant to the decree [*Or*, an order] in this cause [*Or*, matter] dated the —— day of ——, 187—, A. B., of (*residence and addition*) has, by the Chief Clerk's certificate [*Or*, by an order] dated the —— day of ——, 187—, been allowed the purchaser of certain hereditaments to which the said documents relate; and his purchase money for the same has been paid into the bank, to the credit of this cause [*or as may be*].

3. The said A. B., as such purchaser, is now entitled to all the said documents.

Or, to such of the said documents as are specified in the schedule hereto.

Your petitioner therefore humbly prays that, by consent (*i*), all the documents specified in the said order,

Or, affidavit—*Or*, such of the documents specified in the said order [*Or*, affidavit] as are particularised in the schedule hereto,

and so deposited as aforesaid, may be delivered out to the said A. B., or to whom he shall appoint.

And your petitioner will ever pray, &c.

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at Chambers, 9 Feb. 1864, Reg. Lib. A. 354; *Warren* v. *Rudall*, V. C. W. at Chambers, 18 Dec. 1865, Reg. Lib. B. 2432; and Seton, 1162, 1199. In *Matson* v. *Dennis*, V. C. S. at Chambers, 6 Dec. 1869, Reg. Lib. B. 3226, a like order was made on summons, on the application of plaintiff, and appearance of the defendant who deposited, and of the purchaser: on the latter undertaking, whenever required by purchasers of other lots under the decree, to execute to them, at their expense, such covenants for production of the documents, or any of them, as they were entitled to under the conditions of sale. As to title deeds and attested copies, see Dart, 617—621, 1163—1164; 1 Davidson's Conv. 514—515; 1 Prideaux's Conv. 177—179; Sugd. V. & P. 97, 433—453, 837.

(*h*) See *ante*, No. 1428, n. (*g*).

(*i*) For form of consent, see *ante*, No. 59.

1430. Acknowledgment by purchaser of receipt of his conveyance, and consent to purchase money being dealt with (*j*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., the purchaser of the [*Or*, of lot — of the] estates directed to be sold by the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—, hereby admit that I have received the conveyance to me of the premises so purchased by me. And I consent to the distribution or application of my purchase money for the said premises, in any manner the Court of Chancery may direct. And I authorise Mr. C. B., the solicitor of the plaintiff (*or other party having the conduct of the cause*), to appear in person or by counsel, and consent on my behalf to such distribution or application being made: on condition that I am not made responsible to any person for the costs of such appearance and consent. Dated this —— day of ——, 187—.

A. B.

Witness to the signature of the said A. B.
C. A., of (*residence and addition*).

1431. Notice to purchaser of intention to deal with his purchase money (*j*).

Formal parts: see ante, No. 54.

Take notice, that (*State the proceeding about to be taken; as thus:*

this cause, the further consideration whereof was adjourned by the order therein dated the ——, 187—, was on the ——, 187—, set down for further consideration before his lordship the Master of the Rolls—*Or*, his honour the Vice-Chancellor ——, for the —— day of ——, 187—);

and that, on the said hearing on further consideration [*or as may be*], your purchase money for the premises purchased by you under the decree [*Or*, order] in this cause dated the ——, 187—, and which has been paid into the bank, to the credit of this cause [*or as may be*], will be dealt with, in such manner as the Court may direct.

1432. Affidavit of service thereof, and that the purchaser has had his conveyance (*j*).

Formal parts: see ante, No. 9.

1. *Prove service of the notice: see ante*, No. 51.

2. The conveyance to the said A. B., of the hereditaments purchased by him as aforesaid, has, pursuant to the order of the —— day of ——, 187—, been executed and delivered to him: as I know from (*State means of knowledge*).

1433. Summons for the discharge of purchaser's restraint on fund (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that so much of the order dated the —— day of ——, 187—, as directs that the sum

(*j*) See Dan. Pr. 1177.

(*k*) *Ibid.* 1178. For order in like case, see *Bouquet* v. *Waller*, V. C. K. at

of £—— therein mentioned is not to be paid out except for the purchase of annuities, and that such annuities are not to be sold, transferred, or otherwise disposed of, without notice to A. B., the purchaser therein named,

If so: and the entry of such order in the books of the Accountant-General,

may be discharged.

1434.

Affidavit in support of summons to discharge purchaser's restraint on fund (*l*).

Formal parts: see ante, No. 9.

1. *Prove that the purchaser has had his conveyance: see ante*, No. 1432.

2. *Prove service of the summons: see ante*, No. 50.

1435.

Summons by purchaser, for leave to pay off incumbrance out of his purchase money (*l*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser: as in* No. 1412, *ante*):

1. That upon L. M., of (*residence and addition*), the mortgagee of the said premises, under and by virtue of an indenture of mortgage dated the —— day of ——, 187—, made between the testator C. D. of the one part, and the said L. M. of the other part, duly executing the conveyance of the said premises to the applicant, or as he may direct, the applicant may be at liberty, out of his purchase money for the said premises, to pay to the said L. M. the principal sum of £—— due to him on his said mortgage security, together with interest thereon at £— per cent. per annum from the ——, 187—, until payment; and also the costs of the said L. M. as mortgagee: such costs to be taxed by the Taxing Master.

2. That the applicant may, within seven days after the date of the Taxing Master's certificate, pay into the bank to the credit of this cause [*or as may be*], the residue of his purchase money, after deducting the amount paid to the said L. M.

If so: and after deducting £— paid by the applicant as a deposit (*Continue as in* No. 1413, *ante, to the end*).

1436.

Summons by purchaser, for leave to keep incumbrance on foot, and pay in residue of purchase money (*m*).

Proceed as in No. 1435, *ante, to* other part; *and continue thus:* waiving all claims and demands against the estate of the said testator, and his real and personal representatives, under or in consequence of the said indenture, in respect of the principal sum of £—— now due to him on the security thereof, and of all

Chambers, 12 Dec. 1865, Reg. Lib. A. 50. Where the restraining order has been entered in the Accountant-General's books as a stop order, the discharging order, or an office copy, must be entered there also: Dan. Pr. 1178.

(*l*) See Dan. Pr. 1178.

(*m*) *Ibid.* For order in like case, see Seton, 1202.

interest or other monies due, or to become due, in respect thereof, and agreeing that, as between the said L. M. on the one hand, and the real and personal representatives of the said testator on the other hand, the premises comprised in the said indenture shall be deemed to be the only security for the repayment of the said principal, interest, and other monies, the applicant may, on or before the ——, 187—, pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, residue of £——, his purchase money for the said premises, after deducting the said principal sum of £——, and £—— the proportion of the accruing interest thereon, and £——, the proportion to be borne by the testator's estate of the costs of the said L. M., in respect of his said security; and after deducting £—— paid by the applicant as a deposit (*Continue as in* No. 1413, *ante, to the end; but add, after the direction to convey:* subject nevertheless to the said indenture of mortgage, and the monies thereby secured).

1437. Petition to pay off incumbrance out of purchase money in Court (*n*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. This is a suit for the administration of the real and personal estate of the testator A. B., at the instance of creditors [*or as may be*].

2. By the decree made in this cause by your lordship [*or as may be*], dated the —— day of ——, 187—, the usual accounts and inquiries were directed to be taken and made: including inquiries what real estate the testator was seised of, or entitled to, at the time of his death; what incumbrances affected the same; and what were their priorities; and an account of what was due to such of the incumbrancers, if any, as should consent to the sale thereby directed, in respect of their incumbrances; and the said decree also directed a sale of the said real estate (*Continue recital of the direction to sell: see ante,* No. 870).

3. By the certificate of R. M., esquire, the Chief Clerk of your lordship [*Or,* his honour the Vice-Chancellor ——], dated the —— day of ——, 187—, and filed the —— day of ——, 187—, and which became absolute on the —— day of ——, 187—, he, in pursuance of the said decree, certified that the real estate which the said testator was seised of, or entitled to, at the time of his death, consisted of the particulars set forth in the (fourth) schedule to the said certificate; and that the only incumbrance affecting the said real estate was a mortgage created by an indenture dated the —— day of——, 187—, made between the said testator, of the one part, and L. M., of (*residence and addition*), of the other part: that there was due to the said L. M., on the security of the said indenture, the principal

(*n*) See Dan. Pr. 1178. For order in like case, see Seton, 1200.

sum of £——, and the sum of £—— for an arrear of interest thereon at the rate of £5 per cent. per annum, to the date of the said certificate; and that the said L. M. had consented to the said real estate being sold free from his said incumbrance, on the terms of the said decree [*or as may be*].

4. By another certificate of the said Chief Clerk, dated (*&c., as above*), he further certified, in pursuance of the said decree, that the said real estate had been sold by public auction, in one lot, with the approbation of the Judge; and that A. B. had been allowed the purchaser thereof at the sum of £——.

5. Pursuant to the said decree, and of an order made in this cause dated the —— day of ——, 187—, the said A. B., on the —— day of ——, 187—, paid his purchase money of £—— with £—— for interest thereon, making together £——, into the bank, to the credit of this cause; and the same is now represented by £——, bank 3*l.* per cent. annuities, remaining on the like credit.

6. There is now due to the said L. M., upon and by virtue of his said mortgage security, the sum of £—— for principal, and £—— for an arrear of interest thereon to the —— day of ——, 187—; and your petitioner is desirous that the same should be raised and paid out of the said bank annuities.

Your petitioner therefore humbly prays:

1. That the costs of the said L. M., as mortgagee, may be taxed.

2. That upon production of an affidavit that the said L. M. has duly executed and delivered to the said A. B. a conveyance of the said mortgaged premises, free from the aforesaid incumbrance of the said L. M., the principal money and interest due to the said L. M. on his said mortgage security, including interest to the fourth day after bespeaking the sale hereby prayed, and his said costs (the total amount to be verified by affidavit), may be raised by a sale of a sufficient part of the said £——, bank 3*l.* per cent. annuities.

3. That out of the money so raised the said costs may be paid to the solicitor of the said L. M.; and the residue of such money to the said L. M.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note,* No. 58).

1438. Summons, to pay off incumbrance out of purchase money in Court (*o*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*]:

1. That the costs of L. M., as mortgagee, may be taxed.

2. That upon production of an affidavit that the said L. M. has executed and delivered to A. B.: who, by the Chief Clerk's certi-

(*o*) See Dan. Pr. 1178.

ficate [*Or*, by the order] dated the ——, 187—, has been allowed the purchaser of the premises therein mentioned: a conveyance of the said premises, free from the mortgage thereon of the said L. M. for £——and interest created by indenture dated the ——, 187—, in the Chief Clerk's certificate dated the ——, 187—, mentioned [*or as may be*], the principal money due to the said L. M. on his said incumbrance, together with interest thereon at the rate of £— per cent. per annum, from the ——, 187—, to the fourth day after bespeaking the sale, and his said costs (the total amount to be verified by affidavit), may be raised by a sale of a sufficient part of the £—— bank 3*l.* per cent. annuities remaining on the credit of this cause, and representing the purchase money of the said A. B. for the said premises [*or as may be*].

3. That out of the money so raised the said costs may be paid to the solicitor of the said L. M.; and the residue of such money to the said L. M.

1439. Summons, to compel payment in of the purchase money, and for a re-sale on default (*p*).

Proceed as in No. 1419, *ante, to* may be ordered; *and continue thus:*

on or before the ——, 187—, or subsequently within seven days after service, to pay into the bank, to the credit of this cause [*or as may be: according to the decree or order of sale*], the sum of £——: being the purchase money for the said premises:

Or, being the balance of the purchase money for the said premises, after deducting £——, paid by him as a deposit:

If so: and the further sum of £——: being the amount of the valuation of the timber on the said premises; making together the sum of £——:

If so: together with interest thereon at £—— per cent. per annum from the ——, 187— (*as in the conditions or contract of sale*), until payment (the amount to be verified by affidavit).

2. That upon such payment being made, the said A. B. may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187—; and that all proper directions for the conveyance or assurance of the said premises to him may be given.

3. That the said £—— may not be paid out without notice to the said A. B.

4. That the said A. B. may be ordered to pay to the applicant his costs of this application.

Add, if desired: 5. That in default of such payment being made by the said A. B. within the time aforesaid, the premises whereof he has been allowed the purchaser, as aforesaid, may be

(*p*) See Dan. Pr. 1156, 1165; and see *ante*, No. 1373(8). For order in like case, see Seton, 1190. For the method of enforcing the contract against the purchaser, see Dan. Pr. 1178—1180; and of enforcing an order for payment into Court, see *ante*, No. 922, *et seq.*, and notes thereto.

resold pursuant to the conditions of sale under which he purchased the same; without prejudice to his liability to make good any deficiency in the price which may be obtained upon such resale, and of all costs and expenses occasioned by his default (*q*).

1440.

Summons to compel payment by former purchaser of deficiency on a resale, after his default (*r*).

Proceed as in No. 1419, *ante, to* may be ordered; *and continue thus:*

on or before the ——, 187—, or subsequently within seven days after service to pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, being the difference between the sum of £——, the price at which the said A. B. was allowed the purchaser as aforesaid, and the sum of £—— for which the said premises have been resold in pursuance of the order dated the ——, 187—, on his default; and that the said A. B. may be ordered to pay to the applicant and the defendant [*or as may be*] all costs and expenses of and occasioned by such default, and of this application: to be taxed by the Taxing Master.

1441.

Summons by purchaser, for an inquiry as to the title (*s*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser as in* No. 1412, *ante*): that, the applicant objecting to the title to the said premises, an inquiry may be made whether a good title can be made thereto.

1442.

Summons by purchaser, to be discharged from his purchase (*t*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the purchaser, as in* No. 1412, *ante*):

1. That the applicant may be discharged from being such purchaser.

(*q*) See *ante,* No. 1373(10).

(*r*) See Dan. Pr. 1156, 1181; and *ante,* No. 1373(10). For the mode of enforcing the order, see *ante,* No. 922, *et seq.*, and notes thereto.

(*s*) See Dan. Pr. 1165, 1180. For order in like case, see *Kemp* v. *Nunn,* M. R. at Chambers, 15 Jan. 1864, Reg. Lib. A. 25; and see Seton, 1190. For form of statement of points in dispute, see *ante,* No. 1262; which can be readily adapted to this case.

(*t*) See Dan. Pr. 1168, 1180. For order in like case, see Seton, 1208. For forms of condition of sale for the discharge of a purchaser, where the vendors are unable to remove valid objections by him to the title, see Dan. Pr. 1166, n. (*c*); and *ante,* No. 1374(1). As to the grounds for rescinding a contract, see Dan. Pr. 1166—1168; Dart, 144, *et seq.*, 1149, 1150; 1 Davidson's Conv. 459, 552; 1 Prideaux's Conv. 20—23; Sugd. V. & P. 39, 66, 242—256, 871.

2. That his costs, charges, and expenses occasioned by his bidding for,

Or, by his entering into the conditional contract dated the —— day of ——, 187—, in the said order of the —— day of ——, 187—, mentioned,

and being allowed the purchaser of the said premises, and of and incident to this application, may be taxed.

3. That his said costs, charges, and expenses

If so: and also the sum of £——, paid by him as a deposit on his purchase money,

may be paid to him out of the £—— cash in the bank on the credit of this cause [*or as may be*]:

Or, may be raised by a sale of the £——, bank 3*l.* per cent. annuities, standing in the name of the Accountant-General in trust in this cause [*or as may be*], and paid to the applicant:

Or, may be paid to him by the plaintiff C. D.,

without prejudice to the question by whom, or out of what fund, the same should be ultimately borne.

1443.

Summons by vendor, to discharge purchaser (*u*).

Proceed as in No. 1419, *ante, to end of description of the purchaser; and continue thus:* may be discharged from being such purchaser, on the terms following: (*State them*).

1444.

Summons to substitute a purchaser (*x*).

Formal parts: see ante, No. 60.

on the part of A. B.: who (*Describe the original purchaser, as in* No. 1412, *ante; and continue thus:*)

and of C. D., of (*residence and addition*), that the said C. D. may, on or before the ——, 187— (*Add particulars of purchase money, valuation of timber, and interest, to be paid into Court, as in* No. 1413, *ante*); and that thereupon the said C. D. may be substituted for the said A. B. as the purchaser of the said premises; and be let into possession (*Continue as in* No. 1413, *ante, to the end*).

1445.

Affidavit, of no under-bargain, before certificate of sale has become binding (*y*).

In Chancery.

(*Title of the cause, and reference to the record.*)

We, A. B., of (*residence and addition*), and C. D., of (*residence and addition*), severally make oath and say, as follows:—

1. We have agreed that, if approved by this honourable Court,

(*u*) See Dan. Pr. 1181.

(*x*) *Ibid.* 1182. For order in like case, see Seton, 1207. For form of conveyance to a sub-purchaser, the original purchaser joining, see 1 Prideaux's Conv. 303.

(*y*) See Dan. Pr. 1182; Dart, 1094. Since the Sale of Land by Auction Act, 1867 (30 & 31 Vic. c. 48), s. 7 (Dan. Pr. 1183), this affidavit appears to be unnecessary. It is not now required at the Master of the Rolls' Chambers.

the deponent C. D. shall be substituted for the deponent A. B., as the purchaser, at the price of £——, of the hereditaments comprised in Lot ——, part of the estates sold under the decree [*Or*, order] dated the —— day of ——, 187—, in this cause, and of which the deponent A. B. was declared to be the purchaser at the sum of £——, at the sale thereof at ——, on the —— of ——, 187—.

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that, save as aforesaid, there is no agreement, underbargain, contract, or understanding whatsoever by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises so purchased by the deponent A. B. as aforesaid.

Sworn (*&c.: see ante*, No. 13).

1446.

Affidavit, of no underbargain, in support of summons to substitute a purchaser after certificate of sale has become binding (*z*).

Commence as in No. 1445, *ante*.

1. We have agreed that, if approved by this honourable Court, the deponent C. D. shall be substituted for the deponent A. B., as the purchaser of the (hereditaments comprised in Lot ——, part of the) estates sold under the decree [*Or*, order] dated the —— day of ——, 187—, in this cause; and whereof the deponent A. B. is allowed the purchaser by the Chief Clerk's certificate dated the —— day of ——, 187—.

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that no agreement, underbargain, contract, or understanding whatsoever by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises, was made, entered into, or come to upon or at any time prior to the —— day of ——, 187— (*day when certificate became binding*).

Sworn (*&c.: see ante*, No. 13).

1447.

Notice of motion, or summons, to open biddings, or for a resale (*a*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the biddings at the sale, on the —— day of ——, 187—, of the estate directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—, may be opened, and that A. B., the highest bidder at the said sale, may be bound by his highest bidding thereat: which amounted to the sum of £——. Or that the said A. B. may be discharged from being the purchaser of the said estate, and the said estate be directed to be resold: upon such terms as to costs or otherwise as the Judge shall think fit.

(*z*) See note to No. 1445, *ante*, which is applicable also to this Form.

(*a*) See Dan. Pr. 1183; and see the Sale of Land by Auction Act, 1867 (30 & 31 Vic. c. 48), s. 7: *ib.*; Dart, 1091. For the former practice as to opening the

1448.
Affidavit in support of motion or summons (*b*).

Formal parts: see ante, No. 9.

1. *Show that the property in question was put up for sale by public auction, with the approbation of the Judge, pursuant to particulars and conditions of sale settled by him—or as may be; and the result of such sale.*

2. *Show the ground of fraud or improper conduct in the management of the sale, leading up to the application to open the biddings, or for a resale.*

3. *Show means of knowledge.*

1449.
Notice of motion, or summons, for return of deposit to a person outbid at a resale (*c*).

Formal parts: see ante, No. 55, *or* 60.

on the part of A. B., in the order dated the —— day of ——, 187— (*Order directing the resale*), named, that the sum of £——, paid by him as a deposit, pursuant to the said order,

If so: together with interest thereon at the rate of £5 per cent. per annum from the —— day of ——, 187—, till payment,

may be paid to him out of the £—— cash in the bank on the credit of this cause.

Or, may be raised and paid to him out of the £——, bank 3*l.* per cent. annuities, remaining on the credit of this cause *—or as may be.*

1450.
Conditional contract of sale (*d*).

Memorandum of agreement made the —— day of ——, 187—, between A. B., of (*residence and addition*), as the agent for, and on behalf of, the parties interested under the will of E. F., late of, *&c.*, deceased, in the hereditaments and premises hereinafter mentioned [*or as may be*], of the one part, and C. D., of (*residence and addition*), of the other part, as follows:—

1. The said A. B. agrees to sell, and by all necessary parties to convey or assure, to the said C. D., his heirs and assigns, or as he or they shall direct, and the said C. D. agrees to purchase, the hereditaments and premises comprised in (lot — of) the within particulars, at the price or sum of £——: of which sum the said C. D. has this day paid to the said A. B. the sum of £——, as a deposit, and in part payment thereof.

2. The sale and purchase aforesaid are to be subject to the

biddings after a sale, see Dan. Pr. 1196—1202, ed. 4; Dart, 1087—1091; Seton, 1202—1207.

(*b*) See *ante*, No. 1447, n. (*a*).

(*c*) See Dan. Pr. 1184.

(*d*) *Ibid.* For the practice on sales by private contract, under the sanction of the Court, see *ib.* 1184—1186. As to contracts by agents, see Add. Cont. 578—631; Sugd. V. & P. 820; and for the sale of land, Add. Con. 51, 53—55; Dart, 1123—1124; 1 Prideaux's Conv. 55—70; Sugd. V. & P. 121—200; and for forms of contracts of sale, see 2 Davidson's Conv. 3—14; 1 Prideaux, 71.

within particulars and conditions of sale (*e*), in all respects save the following, namely: (*State what; as thus:*

The conditions Nod. 1, 2, *&c.*, are not to apply. The abstract of title under the condition Nod. 6 is to be delivered on or before the ——, 187—; the balance of the purchase money is to be paid into the bank on or before the ——, 187—; and the purchaser is to be entitled to possession, or to the rents and profits, from the ——, 187—).

3. This agreement is conditional on the same being approved by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] in the cause of G. *v.* H., now attached to his Court.

4. The said A. B., or other proper party, is forthwith to take all necessary steps to obtain, at the expense of the vendor, the approval of the said Judge to this agreement.

5. This agreement is to be void unless the approval of the said Judge be, within —— weeks from the date hereof, obtained to this agreement, either in its present terms, or with such variation therein as shall be approved by the said C. D. within the like time.

As witness our hands.

A. B.
C. D.

Signed by the said A. B. and C. D., in the presence of
L. M., of (*residence and addition*).

1451.

Petition to carry conditional contract into effect (*f*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *Show the object of the suit; and that the estate contracted to be sold is part of the subject matter thereof; and that the Court has directed, or has power to direct, a sale of the estate: see* No. 1437, *ante.*

2. By an agreement dated the —— day of ——, 187—, made between (*&c.: Recite the material parts of the agreement*).

3. It will be for the benefit of all parties interested in the said estate that the said agreement should be confirmed and carried into effect.

Your petitioner therefore humbly prays, that the said agreement dated the —— day of ——, 187—, may be confirmed and carried into effect; and that the costs of your petitioner, and of all other parties

(*e*) See Dan. Pr. 1184. The form assumes that the agreement will be indorsed on a print of the particulars and conditions of sale. Where that is not to be the case, the property must of course be described, and the agreed conditions of sale set out, either in the agreement, or in a schedule or exhibit thereto.

(*f*) See Dan. Pr. 1185.

properly appearing thereon, may be costs in this cause.

Or that your lordship (*Conclude as in* No. 57, *ante; and add Foot note*, No. 58.)

1452.

Summons, to carry conditional contract into effect (*g*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the conditional contract dated the —— day of ——, 187—, made between the applicant [*or as may be*] of the one part, and C. D., of (*residence and addition*), of the other part, for the sale to the said C. D., at the sum of £——, of the hereditaments and premises therein described or referred to, part of the estates directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—, may be carried into effect.

1453.

The like, subject to a variation (*h*).

The same as in No. 1452, *ante; but conclude thus:*

may, by consent of the said C. D., be varied by (*Describe the proposed variation; as thus:*

substituting £8,000, for £7,600, as the purchase money for the said premises),

and, as so varied, may be carried into effect.

1454.

Affidavit in support (*i*).

Proceed as in No. 1270, *ante, to the end of par.* 1.

2. I have examined and surveyed the hereditaments and premises described or referred to in the conditional contract for the sale thereof, dated the —— day of ——, 187—, made between A. B. of the one part, and C. D. of the other part, now produced and shown to me, and marked A.; and which said sale was negotiated by me on behalf of the said A. B. [*or as may be*].

3. The sum of £—— in the said contract mentioned is, in my judgment and opinion, the full and fair value of the said hereditaments and premises, and fully as much as would probably be obtained for the same at a sale thereof by public auction.

4. It will be advantageous to all parties interested in the said premises that the said contract should be confirmed and carried into effect.

(*g*) See Dan. Pr. 1185. For orders in like case, see *Re Barlow*, V. C. S. at Chambers, 14 Jan. 1864, Reg. Lib. A. 40; and Seton, 1189, No. 1; and for an order to carry into effect several contracts specified in a schedule, with directions to pay in, by reference to the schedule, see *Smith* v. *Smith*, cited Seton, 1189.

(*h*) See Dan. Pr. 1185. For order in like case, see *Woolmer* v. *Hirtzel*, M. R. at Chambers, 20 July, 1866, Reg. Lib. B. 1739; and see Seton, 1189, No. 2.

(*i*) See Dan. Pr. 1185.

1455.

Affidavit, verifying purchaser's signature to the contract (*i*).

Formal parts: see ante, No. 9.

1. The signature "——," set and subscribed to the paper writing, marked A., now produced and shown to me, and purporting to be an agreement dated the —— day of ——, 187—, between A. B. of the one part, and C. D. of the other part, is of the proper handwriting of C. D., one of the parties to the said agreement: as I know from having seen the said C. D. sign the said paper writing.

1456.

Summons to confirm conditional contract, and to pay in purchase money (*k*).

Proceed as in No. 1452, *or* 1453, *ante, to the end; and continue thus:*

and that the said C. D., he being content with the title to the said premises, may, on or before (*Continue as in* No. 1413, *ante, to the end*).

1457.

Particulars and conditions of sale of timber (*l*).

In Chancery.

(Earl Poulett *v.* Somerset.)

Hinton St. George (*and other parishes*), Somersetshire,

About six miles from C., ten miles from Y., and three miles from D.

To government contractors, ship builders, timber merchants, and others.

Particulars and conditions of sale, of prime navy oak timber, flitterns, fine ash, elm, and beech timber, comprising 969 oak trees (*and other particulars*):

which will be sold by auction, pursuant to an order of the High Court of Chancery, made in the above cause, by Mr. C. B. S. (the person approved of by the Judge to whose Court the said cause is attached), at the "Poulett Arms," Hinton St. George, in the county of Somerset, on Tuesday, the —— day of ——, 1866, at two o'clock, punctually.

The attention of government contractors, ship builders, timber merchants, and others, is particularly directed to this extensive fall of fine timber: the trees being principally of clean growth, very large dimensions, of a most superior quality, and adapted for

(*i*) See Dan. Pr. 1185.

(*k*) *Ibid.* 1184. For order in like case, see *Renwick* v. *Hackworth*, M. R. at Chambers, 19 July, 1866, Reg. Lib. B. 1604. As to paying in a deposit, see Dan. Pr. 1184.

(*l*) *Earl Poulett* v. *Somerset*, M. R. in Chambers, April, 1865: Dan. Pr. 1207. For forms of orders for the sale of timber, see Seton, 511, 1015. For the practice as to the sale of timber by auction, see Dan. Pr. 1186—1187; and by valuation, see *ante*, No. 1373(7). As to timber, see Add. Wrongs, 223—233; Dart, 1279—1280; Dixon's Law of the Farm, 551, 552; 1 Prideaux's Conv. 25; Sugd. V. & P. 32; Woodfall, 511—515.

shipping and other purposes. The timber stands adjacent to good roads, and within an easy distance of railway and water carriage.

Catalogues, with particulars and conditions of sale, may be had at the following hotels (*Naming them*) : of Messrs. P. and A., at *&c.;* of Mr. G. A., at, *&c.*, solicitor ; of Messrs. W. and J., at, *&c.*, solicitors ; of Mr. R. M., at, *&c.;* and of the auctioneer, at P. and W.

The several lots will be shown by Mr. R. M., of Hinton St. George : on application being made to him.

PARTICULARS.

Timber in the Parish of Hinton St. George.
Lyddon Hill Plantation.
Lot 1.—86 oak trees, numbered—.
[*and so on as to the other places and lots.*]

CONDITIONS OF SALE.

1. No person shall advance less than 20*s.* at each bidding for lots under £20 in value ; nor less than £5 for all lots above that sum in value ; nor retract his bidding. (1). Advance at each bidding.

2. The highest bidder shall be the purchaser, on being declared as such by the auctioneer : whose decision in this respect shall be final. (2). Highest bidder.

3. The sale is subject to a reserved bidding for each lot : which has been fixed by the Master of the Rolls, the Judge to whose Court this cause is attached. (3). Reserved bidding.

4. The Chief Clerk of the said Judge will, on ——, the —— day of ——, 1866, at 12 of the clock at noon, certify the result of the sale at the Chambers of the said Judge, in the Rolls' Yard, Chancery Lane, Middlesex : at which time and place the respective purchasers may, if they think fit, attend in person, or by their solicitors. (4). Certifying result of sale.

5. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and sign an agreement for the performance of these conditions. As to all lots the purchase money for which shall not exceed £25, each purchaser thereof shall immediately after the sale, or on the fall of the hammer, if required, pay into the hands of C. B. S., the auctioneer and person appointed by the said Judge to receive the same, the full amount of the purchase money for such lot. And as to all lots the purchase money for which shall exceed the sum of £25, each purchaser thereof shall immediately after the sale, or on the fall of the hammer, if required, pay into the hands of the auctioneer a deposit of £20 per cent. on the amount of his purchase money ; and shall, within twenty days from the day of sale, make and deliver at the expense of such purchaser, his bill or bills, note or notes, with a sufficient surety or sureties for the remainder of his purchase (5). Mode of payment of purchase money.

money, payable to C. B. S., or order, six months after the day of sale, at a banker's in London. Until such bills or notes respectively be given, the purchaser required under this condition to give the same shall not enter upon the premises, or fell or remove away any part of the said timber or trees, but such timber or trees shall, until such bills or notes be so given, be and remain the property of the vendors; and in case default shall be made in procuring such surety or sureties, or in giving such bills or notes as aforesaid, the deposit money shall be forfeited, and the vendors shall have and take to the timber and trees purchased by the person or persons making default, for the use and benefit of the person or persons interested in the estates on which the same shall be standing or growing. If any purchaser, whose purchase money shall exceed £25, shall prefer to pay cash in lieu of giving bills or notes, discount at the rate of 2½ per cent. will be allowed on the amount which he prefers so to pay, on payment thereof.

(6). By purchaser of several lots.

6. If any person shall purchase more than one lot, the lots so purchased by him shall be considered, for the purpose of the 5th condition, as one lot; and the total amount of the purchase money for such lots shall be paid, or the deposit be paid in respect thereof, and security for the remainder be given, as the case may be, accordingly.

(7). Resale on default.

7. If any purchaser shall neglect or fail to pay the purchase money in manner aforesaid, or, before such payment shall have been made, shall become bankrupt, or unable to pay 20*s.* in the pound to his or their creditors, the vendors, or their agents or servants, shall be at liberty to secure and take all the timber and trees, and other produce arising therefrom, purchased by such purchaser, that shall be remaining on the said lands; and the vendors shall be at liberty to sell and dispose of the same, and to apply the money arising by such sale towards paying the purchase money of such purchaser, or such part thereof as shall be unpaid, and all charges attending the converting and selling the said timber and trees and produce thereof: rendering the overplus (if any) to such purchaser, or to any person or persons claiming under him; but such taking possession and sale shall not discharge such purchaser, or his surety or sureties, from their respective liability upon any bill or note then unpaid, any further or otherwise than to the extent of the net proceeds to arise from such sale.

(8). Time for removal.

8. The trees shall be felled in a proper and workmanlike manner, and together with the top, lop, and bark thereof, shall be removed and taken away from the lands at the purchaser's expense, by the 29th day of August, 1866; and if any part of the trees, or top, lop, or bark thereof, shall be, or remain on any part of the said lands after the said time for removing the same as aforesaid, the vendors shall have and take the same to their own use: without making any compensation or satisfaction to the purchaser or purchasers thereof.

9. The timber, bark, tops, and lops, shall not in any way be unnecessarily or improperly dispersed over the woods or fields; and the respective purchasers shall use all possible caution to prevent damage to the lands, growing crops, hedges and gates, and to the adjacent standing timber, in the falling or removing of the timber, and the top, lop, and bark thereof purchased by them; and with their servants, carriages, teams, and horses, shall keep the accustomed roads to and from the woods, plantations, or other parts of the lands where such timber shall be felled, or such other tracts and ways as shall be pointed out by the vendors, or their agents, or servants; and the purchasers or their servants, or workmen, shall not take any dogs into the woods or plantations, or upon the said lands. All injury or damage arising from any breach or disregard of this or any other of these conditions, or any other wilful, unnecessary, or negligent damage, by any of the purchasers or their respective agents, workmen or labourers, horses and other cattle, to the lands or other standing timber and trees on the estates, or to the tenants, their stock, or crops, by the fall or removal of the timber and trees hereby proposed to be sold, shall be forthwith made good and paid by the purchaser thereof; and the amount of such injury or damage shall be settled by the said Judge in case the parties differ about the same; and be thereupon recovered by the vendors as liquidated damages, by such proceedings as may be thought proper; and in such proceedings the certificate of the Chief Clerk of the said Judge shall be conclusive evidence of the amount of such damage; and all questions of compensation to be paid by, or received by, the purchasers shall, in case the parties differ about the same, be settled by the Judge.

(9). Mode of removal; Compensation for damage by purchasers.

10. No tree, pole, or teller, not included in the present sale, shall be cut: under the penalty of £10 for each tree, pole, or teller so cut, over and above the value thereof; and such penalty and value shall be recoverable as liquidated damages.

(10). Penalty for cutting unsold trees.

11. A reasonable number of sawpits may be made in the woods or plantations, at the expense of the purchaser requiring the same; but in such places only as the vendors or their agents shall direct; and the sawpits to be so made shall be filled up and levelled by and at the expense of the purchaser or purchasers making the same, on or before the 29th day of August, 1866.

(11). Sawpits.

12. The purchasers may, with the consent of the agent for the time being of the vendors, erect and use a steam sawing engine or steam sawing engines, not exceeding in the whole two in number, in such place or places as the said agent shall approve in writing, for the purpose of sawing the trees purchased by them into timber; but no such consent will be given unless due provision shall be made as to the procuring of the water required for working such engine or engines, without causing any impediment or inconvenience to the owner or occupier of the lands on which such engine or engines shall be erected, or from which such water shall be obtained.

(12). Steam sawing engines.

(13). Decision of disputes, &c.

13. If any dispute shall arise as to the identity or number of trees comprised in any lot, such dispute shall be decided by Mr. R. P., of H., timber valuer; and no mistake, error, or mis-statement whatsoever in the particulars of sale, or any part thereof, shall vacate or vitiate the sale of the several lots, or any of them; and no compensation or allowance shall be made, paid, or allowed by the vendors or purchasers in respect of any such mistake, error, or mis-statement.

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21. *Settlement of Bills for Acts of Parliament* (*m*).

1458.

Chief Clerk's certificate of approval of draft bill (*n*).

Formal parts: see post, No. 1511.

The draft of a bill to be submitted to Parliament for an Act to (*Set out the title, as in the bill*), has been settled and approved by the Judge; and is identified by my signature at the foot [*Or*, in the margin of the first page] thereof.

If the recitals in the bill have been proved, add: The several instruments, facts, and events recited in the preamble of the said draft bill, immediately before the recital therein of this certificate, have been proved in this cause [*or as may be—Or, if some have not been proved, specify them*].

The evidence produced, *&c.*

1459.

Memorandum of identity of the draft bill (*o*).

In Chancery.

(*Short title.*)

This is the draft of the bill to Parliament referred to in my certificate in this cause [*Or*, matter] dated the —— day of ——, 187—.

R. M., Chief Clerk.

1460.

Recital of the Chief Clerk's certificate, in the preamble of the bill (*o*).

And whereas in pursuance of the said recited order of the Court of Chancery, dated the —— day of ——, 187—, the Chief Clerk of the said Master of the Rolls [*Or*, Vice-Chancellor ——] made his certificate dated the —— day of ——, 187—, in the said cause [*Or*, matter], and thereby certified as follows:—In pursuance of the directions given to me by (*Recite the certificate: omitting the statement of the evidence*): And whereas the said Chief Clerk's certificate was duly approved by the said Master of the Rolls [*Or*, Vice-Chancellor ——], and was on the —— day of ——, 187—, duly filed in the Report Office of the said Court of Chancery.

(*m*) For the practice on this subject, see Dan. Pr. 1187, 1188; and for forms of orders, see Seton, 693, No. 6; 694, No. 7.

(*n*) See Dan. Pr. 1187. The certificate is written either in the margin o at the foot of the draft bill.

(*o*) See Dan. Pr. 1187.

1461.
Affidavit verifying a print of the draft bill (*o*).

Formal parts: see ante, No. 9.

1. I have carefully examined and compared the printed bill now produced and shown to me, and marked A., with the draft of a bill also now produced and shown to me, and marked B.: being the draft of the bill to Parliament which has been settled at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], in pursuance of the order in this cause [*Or*, matter] dated the —— day of ——, 187—.

The said printed bill marked A. is a true and correct copy in print of the said draft bill marked B.

1462.
Memorandum of approval of house bill by the Judge (*p*).

I have settled and do approve of this bill: which is a printed copy of the draft bill referred to in my Chief Clerk's certificate dated the —— day of ——, 187—, in this cause [*Or*, matter].

Dated this —— day of ——, 187—.

(*Judge's signature.*)

Section IV.—Proceedings on adjournments to Chambers (*q*).

1463.
Summons to proceed on matter adjourned to chambers (*r*).

Formal parts: see ante, No. 60.

on the part of the petitioner A. B., to proceed on the petition preferred by him on the —— day of ——, 187—, in this cause [*Or*, matter]: and which on the —— day of ——, 187—, was adjourned for consideration in Chambers [*or as may be*].

(*o*) See Dan. Pr. 1187.

(*p*) *Ibid.*, 1188.

(*q*) As to the power of the Court or Judge to adjourn a matter from or to Chambers, see Dan. Pr. 1040, 1056, 1057; 15 & 16 Vic. c. 80, s. 27. For the practice on adjournments to Chambers, and as to the Registrar's note of the matter adjourned to Chambers, or the directions given to be acted upon at Chambers, see Regul. 8 Aug. 1857, r. 3; Dan. Pr. 1188. The note should be written on a separate sheet, or half sheet, of foolscap paper: Dan. Pr. 1188, n. (*l*).

(*r*) See Dan. Pr. 1188. A summons is sometimes dispensed with: *ib.* n. (*n*).

Section V.—Infants (*s*).

1. *Appointment and removal of Guardians* (*t*).

1464.
Summons, for the appointment of a guardian of the person, where a suit is pending (*u*).

In Chancery.

(*Title of the cause or matter* (*x*), *and reference to the record.*)

Let (*&c.: Proceed as in* No. 1123, *ante, to* application; *and continue thus:*) on the part of the plaintiff [*Or*, defendant—*Or*, above-named] A. B., an infant, by C. D., of (*residence and addition*), his next friend (*y*), that the said C. D. (*State degree of relationship, if any, to the infant; as thus:* the maternal uncle of the said infant), or some other proper person, may be appointed the guardian of the person of the said A. B. during his minority, or until further order—*Add, if desired, a direction for payment of the costs of the application: see post,* No. 1466.

1465.
Summons, for the appointment of a guardian of the person, where no suit is pending (*z*).

In Chancery.

In the matter of A. B., an infant, by C. D., his next friend.

Let (*&c.: Proceed as in* No. 1123, *ante, to* application; *and*

(*s*) See Dan. Pr. 1189—1214.

(*t*) See Dan. Pr. 1189—1198; 15 & 16 Vic. c. 80, s. 26. As to the various kinds of guardianship of infants, see Chambers on Infants, 54—80, 861; 2 L. C. Eq. 613—622, 1029—1030; Macpherson on Infants, 2—114, liii.—lxii. As to the appointment of guardians by the Court of Chancery, and its control over guardians, see Chambers, 81—105, 158—200, 862—864; 2 L. C. Eq. 622—641, 1030—1032; Macpherson, 95—151, lx.—lxii.; Seton, 702; *Re Lyons*, 18 W. R. 238, L. J. G. As to what constitutes a ward of Court, see Dan. Pr. 1190. As to the custody of infants, under 2 & 3 Vic. c. 54, and guardianship of felons, under 3 & 4 Vic. c. 90, see Dan. Pr. Chap. XLV. s. 17; and *post*, Chap. XLV. s. 17. For the origin and history of the general jurisdiction of the Court in the case of infants, see Dan. Pr. 1189, n. (*x*). For order directing an infant to return to the custody of, and reside with, her guardian, see *Toone* v. *Baker*, M. R. at Chambers, 9 May, 1870, Reg. Lib. B. 1108.

(*u*) See Dan. Pr. 1192.

(*x*) Where the infant is not a party to the suit, the application should be intituled in the matter of the infant, and in the suit, and be made by an originating summons: Dan. Pr. 1192. As to originating summonses, see *ante*, No. 1123, and note thereto.

(*y*) For form of authority by the next friend to use his name, see *post*, Chap. XLIV. Where the infant is a party to the suit, and the application is made by him by his next friend, or guardian *ad litem*, therein, the residence of such next friend, &c., need not be stated, and no written authority by him need be filed.

(*z*) See Dan. Pr. 1192; and notes to No. 1464, *ante*. For order in like case, see *Re Boyle*, V. C. S. at Chambers, 9 Feb. 1864, Reg. Lib. A. 330. The application is made by an originating summons. For form of authority by the next friend to use his name, see *post*, Chap. XLIV.

continue thus :) on the part of the above named infant A. B., by the above named C.D., of (*Continue as in* No. 1464, *ante, to the end*).

1466.

Summons, for the appointment of a guardian of the person and estate—or estate only—where no suit is pending (*a*).

In Chancery.

In the matter of A. B., an infant, by C. D., his next friend.

Let (*&c.: Proceed as in* No. 1123, *ante, to* application ; *and continue thus :*) on the part of the above named infant A. B., by the above named C. D., of (*residence and addition*), his next friend :

1. That the said C. D. (*State degree of relationship, if any, to the infant; as thus :* the brother of the said infant), or some other proper person, may—*If so :* upon giving security—be appointed the guardian of the person and estate

Or, the guardian of the estate

of the said A. B., during his minority, or until further order.

If the guardian is to pass accounts, add : 2. And that the said C. D., or other such guardian, may from time to time pass his accounts, and pay the balances which shall be certified to be due from him into the bank to the credit of this matter; and that such balances may be laid out in bank 3*l.* per cent. annuities; and the interest to accrue thereon, and all accumulations of interest, be laid out in like manner [*or as may be*].

If any provision as to costs is necessary, add : 3. And that the costs of this application may be taxed as between solicitor and client; and that the said C. D., or other such guardian, may retain and pay the same out of any monies of the said infant which may come to his hands, and be allowed the same on passing his said accounts [*or as may be*].

1467.

Affidavit, in support of application to appoint a guardian (*b*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, C. D., of (*residence and addition*), and W. R., of, *&c.*, severally make oath and say, as follows :—

And first I the said C. D. for myself say, as follows :

(*a*) See Dan. Pr. 1196; and notes to No. 1464, *ante.*

(*b*) See Dan. Pr. 1195. Upon the application for the appointment of a guardian, evidence must be produced to show: (1) the age of the infant; (2) the nature and amount of his fortune; and (3) what relations he has: *ib.*; Regul. 8 Aug. 1857, r. 19; Bloxam, 43. The fitness of the proposed guardian to be appointed must also be proved by affidavit; and his willingness to act should be shown by production of his written consent: Dan. Pr. 1195. The nature of the other evidence to be adduced in support of the application will depend on the circumstances of the particular case. Thus, it may be necessary to show the marriage of the infant's parents; or the happening of events which have led to the infant becoming entitled to the property sought to be affected by the order, or to the interposition of the Court being required.

1. I am the person proposed to be appointed the guardian of the above named infant A. B.

Or, A. B., the infant named in the summons issued from the Chambers of the Master of the Rolls—*Or*, Vice-Chancellor ——, in this matter on the —— day of ——, 187—, *or as may be.*

2. *Show infant's age; as thus:* The said A. B. is now of the age of —— years, and upwards. He is the same person as "A., son of C. and L. B." named in the paper writing now produced and shown to me, and marked A., and purporting to be a copy, under the seal of the General Register office, of the entry No. ——, in the certified copy of entries of births in the district of D., in the county of L., for the year 186—.

3. *Show nature and amount of infant's fortune; as thus:* The said A. B. is absolutely entitled, under the will of his maternal uncle E. F., late of (*residence and addition*), deceased, to the following properties; namely:—

(1) A freehold estate situate at G., in the county of H., containing about 80 acres, and held by L. M. on lease at £120 a year.

(2) A copyhold house at G., aforesaid, let to N. O. as yearly tenant, at £50 a year.

(3) £2000 bank 3*l.* per cent. annuities, standing in the names of R. S. and T. W., the trustees of the will of the said E. F.

(4) £60 cash in the hands of the said R. S. and T. W., arisen from dividends on the said bank annuities.

The said A. B. is also entitled, under the said will, in remainder expectant on the death of N. F., the widow of the said E. F., to a life interest in £7000 New 3*l.* per cent. annuities, also standing in the names of the said R. S. and T. W., the trustees thereof.

4. *Show what relations the infant has* (*c*); *as thus:* The only relations of the said A. B. now living are:—(1) This deponent, his maternal uncle; (2) S. H., wife of T. H., of (*residence and addition*), the half-sister of the said A. B.; and (3) R. D. V., the half-brother of the said A. B.: who is a captain in Her Majesty's army, and is now stationed with his regiment at Bombay, in the East Indies.

5. *Show where the infant is now residing, and under whose care; as thus:* The said A. B. was, at the time of the death of his father

(*c*) What "relations" are to be included in the statement is a matter of discretion in each case. As a general rule, it should at least be shown what persons there are of or within the same degree of relationship as the proposed guardian; and if the mother is proposed as a guardian, the evidence should extend to uncles and aunts on the father's and mother's sides. The summons should be served upon such relations: unless their acquiescence in the appointment of the proposed guardian is otherwise proved, or service on them is dispensed with: Bloxam, 43; Dan. Pr. 1195. As to what relations are preferred in the selection of a guardian, see Macpherson, 112.

C. B., which happened on the ——, 187—, and is now residing, as a scholar, at Marlborough College, Wiltshire.

6. *Show means of knowledge.*

7. *State willingness to act as guardian; as thus:* I am willing to act as the guardian of the person and estate [*or as may be*] of the said A. B., during his minority, in case this honourable Court shall think fit to appoint me to that office.

And I the said W. R. for myself say, as follows:

8. *Show fitness of proposed guardian; as thus:* I know, and have for —— years last past been well acquainted with, the deponent C. D. The said C. D. is married, and has three children; namely: a son of the age of — years; and two daughters of the respective ages of — and — years. The said C. D. resides with his wife and children at (*State where*). In my judgment and belief the said C. D. is a fit and proper person to be appointed the guardian of the person and estate [*or as may be*] of his nephew the said infant A. B.: for the following reasons (*State them*).

Sworn (*&c.: see ante*, No. 13).

1468.

Consent of guardian to act (*d*).

In Chancery.

(*Short title, and reference to the record.*)

I the undersigned C. D., of (*residence and addition*), do hereby testify my consent to accept the office of guardian of the person and estate [*or as may be*] of the above named infant A. B. [*or as may be*], in case the Court of Chancery shall think fit to appoint me to that office. Dated this —— day of ——, 187—.

C. D.

Signed by the said C. D. in the presence of }

J. K., of (*residence and addition*).

1469.

Recognizance by a guardian of the estate, and his sureties, after an order appointing him subject to his giving security (*e*).

Proceed as in No. 1383, *ante*, *to the first* whereas; *then recite the order appointing the guardian, subject to his giving security; and continue thus:*

And whereas the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whose Court the said matter is attached, hath approved of the above bounden C. D. and E. F. as sureties for the said L. M.; and hath also approved of the above written

(*d*) See Dan. Pr. 1195. For form of affidavit verifying the signature, see *ante*, No. 1355: which can readily be adapted. Where, as in No. 1467, the willingness to act of the proposed guardian is shown by his affidavit, his separate written consent to act is, of course, not required.

(*e*) See Dan. Pr. 1196. For form of memorandum of approval, see *ante*, No. 1383, margin. The amount of the security is regulated by the sum which the guardian is likely to receive during the currency of his periodical account: Dan. Pr. 1196. As to when security will be dispensed with, see *ib.*

recognizance, with the under written condition, as a proper security to be entered into by the said L. M., C. D. and E. F., pursuant to the said order, and the Consolidated General Orders of the said Court in that behalf; and in testimony of such approbation the Chief Clerk of the said Judge hath signed an allowance in the margin hereof:

Now the condition of the above written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall receive on account of the estate of the said infant A. B., and the rents and profits and other income thereof, at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct: then the above recognizance shall be void and of none effect: otherwise, the same is to be and remain in full force and virtue.

Taken and acknowledged (*&c.: see ante,* No. 1383).

1470.

The like recognizance, after approval of the guardian, but before an order appointing him is made (*f*).

Proceed as in No. 1383, *to the first* whereas; *and continue thus:*

Whereas an application was lately made to the High Court of Chancery by a summons taken out at the Chambers of the Right Honourable the Master of the Rolls [*Or,* his honour the Vice-Chancellor ——], on behalf of A. B. an infant, by the above bounden L. M. as his next friend, and intituled "In the matter of A. B. an infant, by L. M. his next friend" [*or as may be*], that the said L. M., or some other proper person, might be appointed the guardian of the estate of the said infant during his minority, or until further order [*or as may be*].

And whereas the Master of the Rolls [*Or,* the said Vice-Chancellor], upon the hearing of the said application, has approved of the said L. M. as a proper person to be appointed such guardian, subject to his first giving security; and has also approved of the above bounden C. D. and E. F. (*Continue as in* No. 1469, *ante, to the end: omitting the words* "the said order and").

1471.

Affidavit of the sureties, as to their solvency (*f*).

The same as No. 1384: *substituting the words:* "for all monies which he shall receive on account of the estate of the said infant A. B., and the rents, profits, and other income thereof" [*or as may be, according to the condition of the recognizance*], *for the words:* "for the deposits to be received by him on the sale in this cause [*Or,* matter]."

(*f*) See Dan. Pr. 1196.

1472. Summons to appoint guardians of the person and estate, on deposit of a security fund in Court, in lieu of a recognizance (*g*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiffs, by G. A. S. their next friend, that upon the said G. A. S. transferring into the name, and with the privity, of the Accountant-General, to the credit of Sartoris *v.* Sartoris (1864, S. 80), "The Guardians' Security Account," £——, bank 3*l.* per cent. annuities, the said G. A. S., and the said A. S., may be appointed guardians of the persons and estates of the infant applicants during their respective minorities: the said bank annuities to stand as security that the said guardians will duly account for all monies which they may receive in respect of the infants' estate: and that, in the mean time, the interest, as it accrues due, on the said bank annuities may be paid to the said G. A. S., until further order—*Direction to pass accounts—and pay in balances: see ante*, No. 1466.

1473. Account of the guardian of an estate, and affidavit verifying same (*h*).

These forms can be readily adapted from the like forms in use in the case of a receiver: for which, *see post*, Chap. XXXIX.

1474. Summons to remove a guardian, or supply a vacancy (*i*).

Proceed as in No. 1464, *ante, to* further order; *and add:* in the place of X. Y., his present guardian [*Or*, now deceased—*Or*, who has intermarried with W. U.—*or as may be—and add, if desired, a direction for payment of the costs of the application*].

1475. Affidavit in support (*i*).

Formal parts: see ante, No. 9.

1. *Show how the guardian sought to be removed, or deceased, or married, was appointed.*

2. *Show the grounds for such removal—or prove such death, or marriage.*

3. *Show the fitness to be appointed of the proposed guardian, and his consent to act* (*k*).

4. *Show with whom, or under whose care, the infant is living.*

(*g*) *Sartoris* v. *Sartoris*, M. R. at Chambers, 18 April, 1864, Reg. Lib. B. 804.

(*h*) See Dan. Pr. 1197. The guardian's accounts are passed in the same manner as a receiver's: *ib.* For order for guardian to leave his account within a limited time, see *Cox* v. *Wright*, V. C. K. at Chambers, 15 Jan. 1866, Reg. Lib. A. 105.

(*i*) See Dan. Pr. 1197.

(*k*) For form of consent to act, see *ante*, No. 1468.

1476.

Summons, for the appointment of a guardian for a special purpose (*l*).

Proceed as in No. 1466, *to* proper person; *and add:* may be appointed the guardian of the said infant, for the purpose of (*State what; as thus:* presenting the Rev. E. F., of (*residence*), Clerk in Holy Orders, to the Lord Bishop of London, for institution to the rectory and parish church of A., now vacant by the death of the Rev. G. H.: of the advowson whereof the said infant is patron or proprietor).

1477.

Summons, for leave to take infant out of the jurisdiction (*m*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff [*or as may be*], that the said infant may be at liberty to accompany J. R. P. (*guardian*), on an intended visit to the L. C. R., in the K. of S.: on the undertaking of the said J. R. P. that the said infant shall return within the jurisdiction of this Court within (two months) from this time; or immediately, if so ordered by this Court.

1478.

Undertaking to bring infant back (*n*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., the guardian of the person of the infant C. D., do hereby undertake that the said infant shall return within the jurisdiction of this Court within —— months from this time. Or immediately, if so ordered by this Court, or any Judge thereof. Dated this —— day of ——, 187—.

A. B.

1479.

Summons to extend time for return of the infant (*o*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff [*or as may be*], that the time limited by the order dated ——, 187—, for the return of the said infant within the jurisdiction of this Court, may be extended

(*l*) As to the appointment of special guardians in general, see Dan. Pr. 1192, n. (*w*); and under the Settled Estates and Lands Clauses Acts, see *post*, Chap. XLV., secs. 5, 7.

(*m*) For orders in like case, see *Lord Herbert* v. *Lady Herbert*, M. R. at Chambers, 25 Jan. 1866, Reg. Lib. A. 67; *Re Dawson, Dawson* v. *Stansfeld*, V. C. B. at Chambers, 8 July, 1870, Reg. Lib. A. 2074; and see Seton, 719—720; 4 M. & C. 677; Macpherson, App. 18. As to taking infants out of the jurisdiction, see Dan. Pr. 1197, 1198; Chambers on Infants, 26; Kerr on Inj. 598; 2 L. C. Eq. 639—641, 1032; Macpherson, 129—132; Seton, 719—721.

(*n*) See Dan. Pr. 1198. The undertaking is usually indorsed on the summons.

(*o*) For order in like case, see *Harris* v. *Harris*, V. C. K. at Chambers, 29 May, 1866, Reg. Lib. A. 1122.

until the —— day of ——, 187—: on the undertaking of W. H. H., one of his guardians, that he shall return within the jurisdiction within the last mentioned time; or immediately, if so ordered by this honourable Court, or any Judge thereof.

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2. 3. *Maintenance and advancement.—Management of property* (*p*).

1480. Summons, for an allowance for maintenance (*q*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff [*or as may be: see ante*, No. 1464]:

That the sum of £—— per annum (free of income tax (*r*)) may be allowed for the maintenance and education of the said infant, as from the —— day of ——, 187— (*s*), and for the time to come, during his minority, or until further order.

If guardian of the person be also guardian of the estate, add: And that such allowance may be retained and applied by W. F., the guardian of the person and estate of the said infant, by equal half yearly payments, on the —— day of ——, and —— day of ——, out of the income of the said infant's estate: the first of such payments to be retained on the —— day of ——, 187—.

Or if a receiver has been appointed, or another person is guardian of the estate, add: And that such allowance may be paid by W. F. the guardian of the estate of the said infant [*Or*, the receiver appointed in this cause], by equal half yearly payments (*as above*); and that he may be allowed the same on passing his accounts.

Or if to be paid out of a fund in Court, add: And that such allowance may be paid to W. F., the guardian of the said infant, by equal half yearly payments (*as before*), out of the interest to accrue from time to time on the £——, bank 3*l*.

(*p*) See Dan. Pr. 1198—1206; 15 & 16 Vic. c. 80, s. 26. As to maintenance of infants, see also 11 Geo. IV. & 1 Will. IV. c. 65, s. 32; 23 & 24 Vic. c. 145, ss. 26, 32—34; Chambers on Infants, 250—379, 892—898; 2 L. C. Eq. 651—662, 1034; Lewin, 419, 420; Macpherson, 213—258, lxx.–lxxii.; Seton, 704. As to advancement, see Chambers, 380—388, 821; Macpherson, 253, 255, 335—337, xxxi.; Seton, 704. As to the jurisdiction of the County Courts, see 28 & 29 Vic. c. 99, s. 1; Dan. Pr. 1198, n. (*x*); and *post*, Chap. XLV. sec. 29. As to the management of an infant's property by the Court, see Dan. Pr. 1204—1206; Chambers, 508—596; Macpherson, 330—347; and see *ante*, No. 1322, *et seq.* As to granting leases on behalf of infants, see *post*, Chap. XLV. sec. 14; and as to the conversion of an infant's property, see Dan. Pr. 1206; Chambers, 565—570; Macpherson, 278—308; Seton, 694—695.

(*q*) See Dan. Pr. 1201.

(*r*) *Ibid.* 1202; Ord. 8 July, 1842, Cons. Ord. App.; Seton, 702.

(*s*) As to an allowance for past maintenance see Dan. Pr. 1202, n. (*a*).

per cent. annuities, standing in the name of the Accountant-General, on the credit of this cause [*or as may be*].
Add, if desired, a direction as to the taxation and payment of the costs of the application: see ante, No. 1466.

1481.

Affidavit in support of summons for allowance for maintenance (*t*).

Formal parts: see ante, No. 9.

1. *Show the age of the infant, the nature and amount of his fortune, what relations he has, where he is residing, and under whose care: see ante*, No. 1467.

2. *Show that the fund proposed to be operated upon for maintenance is available for that purpose.*

3. *Show that the sum sought to be allowed for maintenance is a proper amount; and set forth, in a schedule, a scheme for the application thereof, under the following, or similar heads:—*

School bills	. . . . .
Clothing	. . . . .
Pocket money	. . . .
Medical attendance	. . .
Maintenance, travelling, and incidental expenses in vacations	.
Total	. . £

1482.

Summons for an increase of maintenance (*u*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff A. B. [*or as may be*], that the sum of £—— per annum may be allowed, in addition to the sum of £—— per annum allowed by the order dated the —— day of ——, 187—, making together £—— per annum, for the maintenance and education of the said infant A. B., as from the —— day of ——, 187—, and for the time to come during his minority; and that such increased allowance of £—— a year may be raised and paid in the same manner as the said allowance of £—— is directed to be raised and paid by the said order of the —— day of ——, 187— [*or as may be*].—*Add, if desired, a direction for payment of the costs: see ante*, No. 1466.

1483.

Summons for an advance for the purchase of a commission in the army, and for outfit (*x*).

Formal parts, see ante, No. 60.

on the part of the infant plaintiff, that A. B. and C. D. may be at liberty, out of the capital of the sum of £——, now in their hands, and to which the said infant is entitled, to advance and pay £450 to Messrs. C. G. & Co., army agents, for the purchase

(*t*) See Dan. Pr. 1202.

(*u*) *Ibid.* For order in like case, see Seton, 701.

(*x*) *Re Hodson*, V. C. S. at Chambers, 8 Mar. 1864, Reg. Lib. A. 546; and see Dan. Pr. 1203; and Seton, 708, No. 9.

of an ensign's commission in Her Majesty's army for the said infant; and also to advance and pay £100 in providing the said infant with a suitable outfit.

1484.
Summons for leave to article or apprentice an infant (*y*).

Formal parts: see ante, No. 60.

on the part of the infant plaintiff [*or as may be: see ante*, No. 1464]:

1. That the said infant may be placed out as an articled clerk [*Or*, apprentice] with A. B., of (*residence and addition*), for the purpose of being instructed in the profession [*Or*, trade] of a ——.

2. That £—— may be allowed as a proper premium to be paid to the said A. B., and the further sum of £—— for the outfit of the said infant.

3. That proper articles of clerkship [*Or*, a proper indenture of apprenticeship] may be approved by the Judge.

4. That upon the execution of such articles [*Or*, indenture] by the parties thereto (*State how the premium, and outfit, are to be raised; as thus:*

E. F., the guardian of the said infant, may, out of the rents and profits of his estate, pay to the said A. B. the said premium of £——; and apply the said £—— for such outfit.

Or, C. D., the trustee of the will of E. W., deceased.—*Or*, B. C., the receiver appointed in this cause—may, out of the rents and profits of the said infant's estate, pay the said premium of £—— to the said A. B., and pay the said outfit of £—— to the said E. F.: on the undertaking of the said E. F. to apply the same for that purpose.

Or, the said sums of £—— and £—— may be raised out of the £—— bank 3*l.* per cent. annuities, standing in the name of the Accountant-General on the credit of this cause [*or as may be*]; and that out of the money thereby arising the said £—— may be paid to the said A. B., and the said £—— to the said E. F. (*&c.: as last above*).

5. *Add, if desired, a direction as to the costs: see ante*, No. 1466.

1485.
Affidavit in support (*y*).

Formal parts: see ante, No. 9.

1. The (above named) infant G. H. is now of the age of —— years. He has, of his own free will, chosen to be brought up to the profession [*Or*, trade] of a ——; and wishes to be articled [*Or*, apprenticed] to learn such profession [*Or*, trade]. In my opinion he is physically adapted for such profession [*Or*, trade].

2. I have for —— years last past known, and been well

(*y*) See Dan. Pr. 1203.

acquainted with, A. B., of (*residence and addition of master*) ; and during —— years last past he has been continuously and extensively engaged in his profession [*Or*, trade] of a ——.

3. The said A. B. resides with his wife and family ; and from my knowledge of him, and from inquiries I have made of various persons also acquainted with him, I believe the said A. B. to be a person of good moral character, of respectability and integrity, and well versed in the said profession [*Or*, trade] of a ——. In my judgment and opinion the said A. B. is a fit and proper person to have, and fully competent to instruct, an articled pupil [*Or*, apprentice] in the said profession [*Or*, trade].

4. The said A. B. is willing to take the said infant as an articled clerk [*Or*, apprentice] in his said profession [*Or*, trade] for a term of —— years, on being paid a premium of £——.

5. I have made enquiries of various persons engaged in the said profession [*Or*, trade] of a —— ; and am informed by them, and believe, that the said premium of £—— is a reasonable and proper sum to be paid to a person in the position of the said A. B., for the purpose aforesaid.

6. The said infant will require an outfit on his being articled [*Or*, apprenticed] ; and, from inquiries I have made on the subject, I believe the sum of £—— will be a necessary and proper sum to be expended for such outfit.

1486.

Articles of apprenticeship of an infant (*a*).

This indenture made the —— day of ——, 187—, between A. B., of (*place of business and addition of the master*), of the one part, and E. H., of (*residence and addition*), the father of G. H.,

Or, the guardian of G. H., appointed by an order dated the —— day of ——, 187—, of the High Court of Chancery in a cause wherein the said G. H. is plaintiff, and X. Y., and others, are defendants,

Or, in a matter intituled, in the matter of ——, *or as may be*,

and the said G. H., an infant of the age of —— years, of the other part :

Whereas by an order of the High Court of Chancery, made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] in the said cause [*Or*, matter—*or as may be*], and dated the —— day of ——, 187—, it was ordered that (*Recite the order approving the apprenticeship ; as thus :* the said infant should be placed out as an apprentice with the said A. B. for the term of —— years, for the purpose of being instructed in the trade of a —— ; and that £—— should be allowed as a premium to be paid to the said A. B. on that occasion) :

And whereas this indenture has been settled and approved by the said Judge as an indenture proper to be executed by the several

(*a*) See Dan. Pr. 1203. For forms of articles, and assignment of articles, of clerkship to an attorney and solicitor, see Chitty's Forms, 3—5.

parties hereto for the purpose aforesaid: as appears by the certificate of the Chief Clerk of the said Judge dated the —— day of ——, 187— [*Or*, by the memorandum in the margin hereof, signed by the Chief Clerk]:

If the execution of the indenture is to precede the drawing up of the order (*b*), *substitute the following for the last recital:*

And the Judge being of opinion that the indenture in the said order mentioned, and intended to be made between the parties therein named, and identified by the signature of his Chief Clerk in the margin of the engrossment thereof (meaning thereby these presents, and the memorandum in the margin hereof), was an indenture proper to be executed by the parties thereto for the purpose aforesaid, it was ordered that the said A. B., E. H., and G. H., should execute the same accordingly:

Now this indenture witnesseth, that the said G. H., pursuant to the said order, and of his own free will, doth hereby place and bind himself as an apprentice to the said A. B. in the said trade or business of a ——: to well and faithfully serve him from the date hereof, for the full term of —— years, thence ensuing. And the said A. B., in consideration of the sum of £——, to be paid to him in the manner in the said order mentioned [*or as may be*], and of the covenants and agreements herein contained on the part of the said E. H., doth hereby for himself, his heirs, executors, and administrators covenant with the said E. H., his executors, and administrators, that he the said A. B. will accept and take the said G. H. as his apprentice for the term aforesaid; and will, to the best and utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said G. H. in his said trade or business of a ——; and will, at the expiration of the said term, in case the covenants and agreements on the part of the said E. H. shall have been duly performed, deliver up to the said G. H. this indenture, together with a certificate of the due and faithful service of the said G. H. thereunder; and that in case either of them the said A. B. and G. H. shall die during the first three years of the said term, he the said A. B., or his executors or administrators, will repay and return, to such person, or in such manner, as the said Court of Chancery, or any Judge thereof, shall direct, the proportionate part following of the said premium of £——; namely: if such death shall happen during the first year of the said term, the sum of £——; and if during the second year thereof, the sum of £——; and if during the third year thereof, the sum of £——.

(*If the master is to make a periodical allowance to the apprentice, or to maintain or clothe him, &c., add a covenant by him to that effect.*)

And the said E. H. (*If so:* as such guardian as aforesaid,) doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B. his executors, administrators and

(*b*) See Dan. Pr. 1203, n. (*k*).

assigns, that the said G. H. will well and faithfully serve the said A. B., as his apprentice in his said trade or business, from the date hereof, for the full term of —— years thence ensuing; and will not at any time during the continuance of the said term, destroy, embezzle, spend, or make away with any of the books, accounts, papers, monies, or other property of the said A. B. And will, from time to time, and at all times during the continuance of the said term, keep the secrets of the said A. B., and readily, and cheerfully, obey, and execute his lawful and reasonable commands; and will not, at any time during the continuance of the said term, absent himself from the service of the said A. B. without first obtaining his consent thereto; but will, during the said term, demean himself in all things towards the said A. B. and his family as a good and faithful apprentice.

(*If the father or guardian is to maintain, and clothe, &c., the infant during the term, add a covenant on his part to that effect.*)

In witness, *&c.*

4. *Marriage, and Marriage Settlements* (*c*).

1487. Petition to interdict marriage of ward of Court (*d*).

Title—and address to the L. C. or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*), the guardian of the above named plaintiff C. D., an infant [*or as may be*].

Showeth as follows:

1. *Show how infant has become a ward of Court; as thus:* This suit has been instituted by the said plaintiff C. D., by E. F. her next friend, for the purpose of having the estate of G. D., deceased, the father of the said C. D., administered under the direction of this honourable Court. The said C. D. is, under the will of the said G. D., entitled to one fourth of the clear residue of his personal estate: which is of considerable value.

2. *Show present age of infant; as thus:* The said C. D. is now of the age of —— years: having been born on the —— day of ——, 185—.

3. *Show appointment of guardian, if any; as thus:* By an order made in this cause by your lordship [*or as may be*], dated the —— day of ——, 187—, your petitioner was appointed the guardian of the said C. D. during her minority, or until further order.

4. *Show the grounds for the belief that a clandestine marriage is in contemplation; and with whom; and, if so, that the intended wife, or husband, is not a fit person.*

(*c*) See Dan. Pr. 10—13, 1206—1214. As to the marriage of wards of Court, and settlements thereon, see Chambers on Infants, 899—901; Macpherson on Infants, 191—209.

(*d*) See Dan. Pr. 1207. For orders in like case, see Seton, 727, 728, 732. As to substituted service, see Dan. Pr. 1207, n. (*g*).

Your petitioner therefore humbly prays, that the said X. Y. and C. D. (*intended husband and wife*) may be restrained from intermarrying; and from having any interview, intercourse, or communication with each other, in any manner whatsoever.

Or that your lordship (*Conclude as in* No. 57, *ante, and add foot note*, No. 58).

1488.

Notice of motion to commit husband for marrying ward without consent (*e*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that A. B., of (*residence and addition*), may be committed to prison for a contempt of this honourable Court in having married the infant defendant E. F. [*or as may be*] without the leave of this Court.

1489.

Notice of motion, for inquiry as to validity of marriage of ward (*f*).

Formal parts: see ante, No. 55.

on the part of A. B., the guardian of the above named infant C. D. [*or as may be*], that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with F. G., of (*residence and addition*), and under what circumstances; and in case a valid marriage has been contracted, that a proper settlement of the fortune of the said infant may be approved by the Judge.

1490.

Petition, for the like (*g*).

Proceed as in No. 1487, *ante, to end of par.* 3.

4. *Show grounds for the belief that a marriage has taken place; with whom, when, and where; and by whose connivance.*

Your petitioner therefore humbly prays, that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with the said F. G., and under (*Continue as in* No. 1489, *ante, to the end*).

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*e*) See Dan. Pr. 1207. For order in like case, see *Trevena* v. *Juliff*, M. R. 25 Mar. 1865, Reg. Lib. B. 613; and see Seton, 731. In the case cited, satisfactory evidence of the marriage having been given at the hearing of the application, an inquiry as to its validity was not directed: Dan. Pr. 1208, n. (*m*).

(*f*) See Dan. Pr. 1207; and see Seton, 729, No. 4.

(*g*) See Dan. Pr. 1207. For order, on adjourned petition of the guardian, requiring him and the infant, and the infant's alleged wife, to attend in Court, and for an inquiry whether a valid marriage had been contracted, see *Holme* v. *Dudley*, V. C. M. at Chambers, 14 Dec. 1866, Reg. Lib. A. 2588.

1491.

Petition under the Marriage Act, for judicial approval of a marriage (*h*).

In Chancery.

(*Branch of Court: see ante*, No. 197.)

In the matter of A. B., an infant, by C. D. her next friend, and of the Act of Parliament 4th George the 4th, chapter 76, intituled "An Act for amending the laws respecting the solemnisation of marriages in England."

To the Right Honourable (*&c.: see ante*, No. 56).

The humble petition of the above named infant A. B., by C. D., of (*residence and addition*), her next friend.

Showeth as follows:

1. Your petitioner is of the age of —— years: having been born on the —— day of ——, 185—.

2. Your petitioner is desirous to marry E. F., of (*residence and addition*): who is of the age of —— years.

3. *Show the special grounds for the application; as thus:* C. B., the father of your petitioner, is *non compos mentis*. He has been found of unsound mind by proceedings in lunacy; and is at present an inmate in the asylum kept by L. M. for insane persons, at ——.

4. The fortune of your petitioner consists of the following particulars (*State them*). It is intended that the fortune of your petitioner shall, on the said marriage, be vested in trustees, on the usual trusts for your petitioner, and the said E. F., successively for life; with remainder to the children or remoter issue of their marriage; with remainder to your petitioner if she survives the said E. F., and, if not, then, on his death, to her testamentary appointees, or statutory next of kin [*or as may be*].

5. The said proposed marriage is a fit and proper marriage for your petitioner; but by reason of the mental incapacity of your petitioner's father [*or as may be*], the consent of this honourable Court to the said marriage is necessary under the provisions of the said Act.

Your petitioner therefore humbly prays, that it may be declared that the said intended marriage between your petitioner and the said E. F. is a fit and proper marriage within the intent and meaning of the said Act of Parliament; and that your petitioner and the said E. F. may be at liberty to contract the same accordingly.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*h*) See Dan. Pr. 1208; 4 Geo. IV. c. 76, s. 16. For orders in like case, see Seton, 733, Nos. 1, 2.

Formal parts: see ante, No. 9.
1. *Verify the statements in the petition.*
2. *Show means of knowledge.*

1492. Affidavit in support (*i*).

1493. Affidavit of parent or guardian, to found information, under the Marriage Act, for a forfeiture, on a valid marriage improperly procured (*j*).

In Chancery.
(*Branch of Court: see ante*, No. 197.)
In the matter of the marriage solemnised between A. B. and C. D.; and of the Act of Parliament, 4th George the 4th, chapter 76, intituled, "An Act for amending the laws respecting the solemnisation of marriages in England."

I, G. B., of (*residence and addition*), make oath and say, as follows:—

1. *Show that the deponent is a parent or guardian; as thus:* I am the father of the above named A. B.;

Or, I am the testamentary guardian of the above named A. B., appointed by the will of her father H. B., late of, *&c.*—*or as may be*,

and I am the relator to the information intended to be filed by Her Majesty's Attorney [*Or*, Solicitor] General, in respect of the above mentioned marriage, under the provisions of the above mentioned Act of Parliament.

2. *Show marriage of parents; as thus:* I [*Or*, The said H. B., deceased] was married to E. F., spinster, at the parish church of M., in the county of N., on the —— day of ——, 18—. The paper writing now produced and shown to me, and marked A. (*k*), and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of M., for the year 18—, relates to the said marriage.

3. *Show that the infant is a child of the marriage, and the age; as thus:* The said A. B. is one of the children of the said marriage. The said A. B. was born on the —— day of ——, 18—; and she is the same person as "A. daughter of H. and E. B.," named in the paper writing now produced and shown to me, and marked B. (*k*), and purporting to be a copy, under the seal of the General Register Office, of the certified entry No. ——, in the certified copy of entries of births in the district of I., in the county of L., for the year 18— [*or as may be*].

4. *Show marriage of infant; as thus:* On the —— day of ——, 187—, a marriage was solemnised at the parish church of O., in the county of P., between the above named C. D., of (*residence and addition*), and the said A. B. The said A. B. and C. D. are respectively the same persons as "C. D. and A. B.," respectively named in the paper writing marked C. (*k*), now produced and shown

(*i*) See Dan. Pr. 1209.

(*j*) See 4 Geo. IV. c. 76, s. 23; 6 & 7 Will. IV. c. 85, s. 43; 19 & 20 Vic. c. 119, s. 19; Dan. Pr. 10—13. For form of order, see Seton, 733, No. 3.

(*k*) Exhibit same. For memorandum of exhibit, see *ante*, No. 43.

to me, and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of O. for the year 187— [*or as may be*].

5. *Show that the marriage has been solemnised in such manner, and under such circumstances, as are sufficient to authorise the filing of the information; and that such marriage has been solemnised without the consent of the party or parties at whose relation the information is proposed to be filed, or of any other parent or guardian of the minor, to the knowledge or belief of the deponent; and that the deponent has not known or discovered that such marriage has been solemnised more than three months previous to the application to the Attorney or Solicitor-General* (*l*).

6. *Show means of knowledge.*

Sworn (*&c.: see ante*, No. 12 (*m*).)

1494.

Petition for leave for a ward of Court to marry (*n*).

In Chancery.

(*Branch of Court: see ante*, No. 197.)

(*Title of the cause or matter in which the infant is a ward of Court; and, where applicable, add:*

and in the matter of the Act of Parliament, 18th & 19th Victoria, chapter 43, intituled, "An Act to enable infants, with the approbation of the Court of Chancery, to make binding settlements of their real and personal estate on marriage).

To the Right Honourable (*&c.: see ante*, No. 56).

The humble petition of the above named infant E. F., by G. H., of (*residence and addition*), her testamentary guardian [*or as may be*].

Showeth as follows:

1—3. *Show how the infant has become a ward of Court—the infant's age—and the appointment of a guardian, if any: as in* No. 1487, *ante.*

4. *Show, concisely, the state of the infant's fortune; and how invested.*

5. J. K., of (*residence and addition*), has made proposals of marriage to your petitioner: which proposals she has, with the sanction and approval of her said guardian G. H., accepted, subject to the approbation of this honourable Court.

6. *State, shortly, the age, rank, position in life, and fortune of the proposed husband.*

Your petitioner therefore humbly prays, that an

(*l*) See 4 Geo. IV. c. 76, s. 23; Dan. Pr. 11.

(*m*) The oath may now be administered by a Record and Writ Clerk, or a London Commissioner to administer oaths in Chancery: 10 & 11 Vic. c. 97; 15 & 16 Vic. c. 87, s. 29; 16 & 17 Vic. c. 78, ss. 1—2: see Dan. Pr. 11, n. (*m*).

(*n*) See Dan. Pr. 1209. As to the marriage of wards of Court, with the sanction of the Court, and settlements thereon, see *ib.* 1209—1211; and see *post*, No. 1501, n. (*x*).

inquiry may be made whether the said proposed marriage is a fit and proper marriage for your petitioner; and if so, that your petitioner and the said J. K. may be at liberty to lay proposals before the Judge in Chambers for a settlement on such marriage; and that a proper settlement of the property of your petitioner may be approved, and be executed by all necessary parties; and that, upon the due execution thereof, your petitioner and the said J. K. may be at liberty to intermarry.

(*Add prayer for direction as to taxation and payment of costs, where desired.*)

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1495.

Summons for leave for a ward of Court to marry (*o*).

Formal parts: see ante, No. 60.

on the part of the above named infant E. F., by G. H., her testamentary guardian [*or as may be*]:

1. That the applicant may be at liberty to accept proposals of marriage made to her by J. K., of (*residence and addition*).

2. That a proper settlement prior to such marriage may be settled and approved by the Judge.

3. That, upon the execution of such settlement by all necessary parties, the applicant and the said J. K. may be at liberty to intermarry.

4. *Add clause as to taxation and payment of costs, where desired.*

1496.

Proposals for a settlement (*p*).

In Chancery.

(*Short title, and reference to the record.*)

The proposals of the infant E. F., and of J. K., for a settlement to be executed on their marriage.

1. The property of the said E. F. consists of (*State what*).

2. The property proposed to be settled by the said J. K. consists of (*State what*).

3. The trustees proposed on behalf of the said E. F. are, A. B., of (*residence and addition*), and C. D., of, *&c.*

(*o*) See *ante*, No. 1494, n. (*n*).

(*p*) See Dan. Pr. 1210. For other forms of proposals for a settlement, see 3 Davidson's Conv. 762. As to settlements of real and personal estate, see *ib.* 1—532; 2 L. C. Eq. 647; 1 Prideaux's Conv. 168—180. For precedents of marriage settlements in general, see 1 Prideaux, 186—291; 3 Davidson, 533—1196; and with the sanction of the Court, *ib.* 727, 747, 754, 1062; Peachey, 790—810. As to the stamp duties, see the Stamp Act, 1870 (33 & 34 Vic. c. 97), Sched. A female ward should be empowered to provide for her children by a future marriage: *Rudge* v. *Winnall*, 11 Beav. 98; and see *Bathurst* v. *Murray*, 8 Ves. 74.

4. The trustees proposed on behalf of the said J. K. are, B. C., of, *&c.*, and X. Y., of, *&c.*

5. It is proposed to vest the whole of the fortune of the said E. F. in the said four trustees, upon the following trusts (*State the same shortly; as thus:*

Upon trust for the said E. F. till the marriage; and after the marriage,

Upon trust to pay the income to the said E. F., for her separate use, but without power of anticipation, during the joint lives of the said E. F. and J. K.; and after the decease of either, to pay the income to the survivor for life.

After the death of the survivor, the corpus to be held in trust for the children or remoter issue of the marriage, as the said E. F. and J. K. shall jointly by deed, and, in default, as the survivor shall by deed or will, appoint; and subject to any such appointment, in trust for the children of the marriage equally: to vest in sons at twenty-one, and in daughters at twenty-one or marriage.

In default of issue, the corpus to be held in trust for the said E. F., if she survives the said J. K.; and if not, then in trust for her testamentary appointees, or statutory next of kin, as if she had never been married).

6. Power to be reserved to the said E. F., if she survives the said J. K., to make a settlement, out of her fortune, on a subsequent marriage: to the extent of one half, if but one child of the present marriage; and of one third, if two or more such children. The settlement to contain an agreement to settle any other or future property of the said E. F. amounting, at any one time, at the time of the acquisition thereof in possession, to £——: except plate, jewels, and similar articles: which excepted articles are to be held for her separate use.

7. *Set out, in like manner, the proposed trusts of the property to be settled by the husband.*

8. The settlement also to contain all such provisions as to maintenance, advancement, hotchpot, investment and transposition, appointment of new trustees and reimbursement, as the Judge may approve.

1497.

Preparation and completion of the settlement (*q*).

See the following forms, *ante:* which can be readily adapted :—

Direction to the conveyancing counsel to settle the draft: No. 1358.

Certificate on copy draft: No. 1274.

Affidavit of eligibility of the proposed trustees: No. 1353.

Their consent to act: No. 1354.

Affidavit verifying their signatures thereto: No. 1355.

(*q*) See Dan. Pr. 1210. As to the settlement of deeds at Chambers, see *ib.* 1146; and *ante*, No. 1357, *et seq.*

Affidavit of examination of engrossment of the settlement : No. 1275.
Memorandum of identity : No. 1276.
Affidavit of the execution of the settlement : No. 1279.
Certificate of the execution thereof : No. 1280.

1498. Minute of order approving the settlement, on a petition referred to Chambers (*r*).

Formal parts : see ante, No. 1281.
Read : The within petition.
Affidavit of W. Y., filed ——, 187—, and the exhibit thereto, marked A., whereby it appears the petitioner, E. F., is of the age of —— years and upwards ; the written consent of A. B., and C. D., hereinafter named to act as trustees ; the affidavit of N. D., filed——, 187—, verifying their signatures thereto ; the affidavit of C. S., filed ——, 187—, and the exhibits marked K. and L. thereto (*Draft settlement, and engrossment*).
(*Add any further evidence adduced : see ante*, No. 1194.)
The Judge being of opinion that the proposed marriage between J. K., in the petition named, and the infant E. F., is a fit and proper marriage for the said infant ; and that the settlement proposed to be effected by the indenture hereinafter mentioned is a proper settlement to be made upon or in contemplation of such marriage ; and that the indenture marked X., intended to be made between (*Set out the parties, as in the deed*), and identified by the signature of the Chief Clerk in the margin of the engrossment thereof, is a proper indenture for giving effect to such settlement, doth
If petition presented under 18 & 19 Vic. c. 43, *add :* pursuant to the said Act of Parliament, sanction and approve the same ; and doth
order, that the petitioner E. F. be at liberty, upon or in contemplation of her said marriage, to execute the said indenture ; and that upon the execution thereof by the said E. F. and J. K., and (*other parties*) : such execution to be certified by the Chief Clerk : the said J. K. and E. F. be at liberty to intermarry—*Add any direction given as to the trust funds, or the costs.*

1499. Affidavit, proving the marriage (*s*).

Formal parts : see ante, No. 9.
1. J. K. and E. F., respectively named in the paper writing now produced and shown to me, and marked Y. (*t*), and purporting to be a certified copy of an entry in the register book of marriages kept for the parish of A., in the county of B., for the year 187—, of the marriage of J. K. and E. F., are respectively the same persons as J. K. and E. F., in the order made in this cause [*Or*,

(*r*) See Dan. Pr. 1210. For order in like case, see Seton, 722. The minute usually indorsed on the original petition.
(*s*) See Dan. Pr. 1211.
(*t*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

matter] dated the —— day of ——, 187—, respectively named: as I know (*State means of knowledge; as thus:* from having been present at the said marriage).

1500.

Order approving marriage of ward, and settling fund, without deed (*u*).

Formal parts: see ante, No. 1194.

And the Judge being of opinion that the proposed marriage between the said A. B. and the said infant C. D. is a fit and proper marriage for the said infant; and it appearing that the property to which the said infant is entitled consists of £—— bank 3*l.* per cent. annuities, and £—— reduced annuities, respectively remaining on the credit of this cause, "The account of C. D., an infant"; and the Judge having approved the settlement hereinafter contained, as a proper settlement to be made of the said property upon or in contemplation of the said marriage, doth

If so: pursuant to the said Act of Parliament (*v*), sanction and approve the same; and doth

order, that the Taxing Master do tax the costs of the infant of this application, and incident thereto; and that, upon production of the Chief Clerk's certificate of the solemnisation of the said marriage, so much of the said £—— bank 3*l.* per cent. annuities as will raise the said costs and £50, be sold; and that out of the money to arise from such sale the said costs be paid to Mr. E. F., the applicant's solicitor, and the said £50 be paid to G. H., the guardian of the said infant, for the outfit of the said infant: he undertaking duly to apply the same; and that the residue of the said bank annuities, and the said £—— reduced annuities, be carried over in trust in this cause, "The account of the settlement of C., the wife of A. B., and her children"; and be thenceforth held upon the following trusts; namely: upon trust for the said C. D. for her life, and, during any coverture, for her separate use: without power of anticipation. And after her decease, in case the said A. B. shall survive her, upon trust for him for his life. And after the decease of the survivor of them, upon trust for all, or any one or more, exclusively of the other or others, of the children of the said C. D., by her said intended or any future marriage, as she shall, by deed or will, appoint; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said intended marriage who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age, or marry under that age; and if more than one in equal shares. And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain that age or be married, then, in case the said C. D.

(*u*) For order in like case, see *Fitchew* v. *Fitchew*, M. R. at Chambers, 20 Dec. 1864, Reg. Lib. A. 2526.

(*v*) 18 & 19 Vic. c. 43.

shall die under coverture, in trust for such person or persons as she shall, by her last will, appoint; and in default of such appointment, in trust for the next of kin of the said C. D., according to the statutes for the distribution of the estates of intestates, as if she had never been married; but in case she shall survive her present or any future husband, then in trust for the said C. D., her executors, administrators, and assigns. And any of the said children who shall take appointed shares shall bring such appointed shares into hotchpot, with their brothers and sisters, taking in default of appointment. And it is ordered that, after the said intended marriage, the interest to accrue on the sums of annuities to be carried over as aforesaid be from time to time, as the same shall accrue, paid to the said C. D., on her separate receipt, during her life, or until further order.—Liberty to apply.

1501. Petition for sanction to a settlement under 18 & 19 Vic., c. 43, where the infant is not a ward of Court (*x*).

In Chancery.

(*Branch of Court: see ante*, No. 197.)

In the matter of E. F., an infant, by G. H., her next friend [*Or*, guardian]; and of the Act of Parliament, 18th & 19th Victoria, chapter 43, intituled (*&c.: as in* No. 1494, *ante*).

To the Right Honourable (*&c.: as in* No. 56, *ante*).

The humble petition of the above named E. F., an infant, by the said G. H., of (*residence and addition*), her next friend [*Or*, guardian].

Showeth as follows:

1. *State the infant's age; as thus:* Your petitioner is of the age of —— years: having been born on the —— day of ——, 185—.

2. *State whether the infant has any parent or guardian; and with whom, or under whose care, the infant is living; as thus:* Your petitioner has no father now living; and no testamentary guardian, and no guardian appointed by this honourable Court. She is now residing with her mother, M. A. F., of (*residence*), widow.

3. *Show, concisely, the state of the infant's fortune; and how invested; as thus:* Your petitioner is entitled under the will of her father H. F., late of, *&c.*, deceased, expectant on her attaining the age of twenty-one years, or marrying sooner, to (*State what*).

4. *State proposed marriage; as thus:* J. K., of (*residence and addition*), has made proposals of marriage to your petitioner: which she has, with the approbation of her said mother, accepted.

5. *State, shortly, the age, rank, position in life, and fortune of the proposed husband.*

6. Your petitioner is desirous, with the sanction of this

(*x*) See Dan. Pr. 1211—1214; 18 & 19 Vic. c. 43. As to adjourning the petition into Chambers, and the practice thereon, see Dan. Pr. 1212. For form of summons to proceed on an adjourned petition, see *ante*, No. 1463.

honourable Court, upon or in contemplation of her marriage with the said J. K., to make a valid and binding settlement of her property.

Your petitioner therefore humbly prays, that a proper settlement of your petitioner's property may, under or by virtue of the said Act of Parliament, be sanctioned by this honourable Court; and that your petitioner may be at liberty, upon or in contemplation of her said marriage, to execute such settlement.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1502.

Affidavit in support of the petition (*y*).

Formal parts: see ante, No. 9.

We, M. A. F., of (*residence*), widow, and H. K., of (*residence and addition*), severally make oath and say as follows:—

And first I the said M. A. F. for myself say, as follows:—

1. *Show the infant's age; as thus:* I am the mother of the above named infant E. F.: she was born on the —— day of ——, 185— (*z*).

2. *Show whether the infant has any parents, or guardians; as thus:* My husband H. F., the father of the said infant E. F., died on the —— day of ——, 187—. The said E. F. has no testamentary guardian, and no guardian appointed by this honourable Court.

3. *Show with whom, or under whose care, the infant is living; and, if the infant has no parents or guardians, what near relations the infant has; as thus:* Since the death of my said husband, the said E. F. has resided, and is now residing, with me, at ——, aforesaid.

4. *Show the rank and position in life of the infant and parents; as thus:* My said late husband H. F., at the time of his death, and had for many years prior thereto, carried on an extensive business as a shipowner and general merchant.

5. *Show what the infant's property and fortune consist of; as thus:* Under the will of the said H. F. the said E. F. is entitled,

(*y*) See Dan. Pr. 1213. When the petition is adjourned to Chambers, evidence must be produced to show:—(1) The age of the infant; (2) Whether the infant has any parents or guardians; (3) With whom, or under whose care, the infant is living; and, if the infant has no parents or guardians, what near relations the infant has; (4) The rank and position in life of the infant and parents; (5) What the infant's property and fortune consist of; (6) The age, rank, and position in life of the person to whom the infant is about to be married; (7) What property, fortune, and income such person has; (8) The fitness of the proposed trustees, and their consent to act: Regul. 8 Aug. 1857, r. 20; Dan. Pr. 1213.

(*z*) If any other person than the mother makes the affidavit, a certificate of the birth or baptism should be produced, and the infant identified therewith, by the affidavit. For form of affidavit, see *ante*, No. 1493, par. 3.

contingently upon her attaining the age of 21 years, or marrying sooner, to the following properties: (*State what*).

6. J. K., of (*residence and addition*), has made proposals of marriage to my said daughter E. F. Such marriage will, in my judgment and belief, be a proper and eligible marriage for my said daughter, and it has received my sanction.

7. *Show means of knowledge.*

And I the said H. K. for myself say, as follows:—

8. *Show the age, rank, and position in life of the person to whom the infant is about to be married; as thus:* I am the father of J. K., of (*residence and addition*), the person who has made proposals of marriage to the said E. F. The said J. K. is of the age of —— years. The said J. K. is a solicitor of this honourable Court; and has been in practice as such for —— years last past. His professional income for the last —— years has amounted, as I am informed by him and believe, to the sum of £—— per annum or thereabouts.

9. *Show what property, fortune, and income such person has; as thus:* My said son is entitled, on the death of the survivor of me and L. K., my wife, under the trusts of the indenture of settlement made on our marriage, and dated the —— day of ——, 18—, to one third share of and in (*Set out particulars of the trust property, and of any other property to which the intended husband may be entitled*).

10. *Show means of knowledge.*

Sworn (*&c.: see ante*, No. 13).

1503. Preparation and completion of the settlement (*a*).

See the Forms referred to in No. 1497, *ante:* which can be readily adapted.

1504. Minute of order sanctioning settlement (*b*).

Proceed, as in No. 1498, *ante, to the end of the statement of the evidence; and continue thus:*

And the Judge being of opinion that the settlement proposed to be effected by the indenture hereinafter mentioned is a proper settlement to be made upon or in contemplation of the intended marriage of the infant petitioner E. F., with J. K., in the petition named, of the property of the said infant comprised therein; and that the indenture, marked X., intended to be made between (*Set out the parties, as in the settlement*), and identified by the signature of the Chief Clerk in the margin of the engrossment thereof, is a proper indenture for giving effect to such settlement, doth, pursuant to the said Act of Parliament, sanction and approve the same; and doth order that the petitioner E. F. be

(*a*) For form of proposals for a settlement, see *ante*, No. 1496; and as to settlements generally, see *ib.* n. (*p*).

(*b*) See Dan. Pr. 1214. For order in like case, see Seton, 723, No. 2.

at liberty, upon or in contemplation of her marriage with the said J. K., to execute the said indenture accordingly.

1505.

Recital in the settlement of the order approving the same (*c*).

And whereas by an order of the High Court of Chancery, made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] in the matter of E. F. an infant by (*Set out the title of the order*), and dated the —— day of ——, 187—, after premising that the Judge was of opinion that the settlement (*Recite the rest of the order approving the settlement; but add, after* "engrossment thereof," *the words* "(meaning thereby these presents, and the signature in the margin hereof)."

Section VI.—Persons of Unsound or Weak Mind, not so Found.

1506.

Petition for the appointment of a guardian, and allowance for maintenance, of a person of unsound mind, not so found (*d*).

Title—and address to the L. C. or M. R.: see ante, No. 56.

The humble petition of A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend.

Showeth as follows:

1. *Show state of mind of the petitioner; as thus:* Your petitioner is a person of weak or unsound mind; but he has not been so found by inquisition or other proceeding in lunacy.

2. *Show the age of the petitioner.*

3. *Show the nature and amount of the petitioner's fortune; and that the fund proposed to be operated upon for maintenance is available for that purpose, and is under the administration of the Court of Chancery* (*dd*).

4. *Show what relations the petitioner has.*

5. *Show where the petitioner is residing, and under whose care.*

6. It will be for the benefit and advantage of your petitioner that the said C. D. should be appointed to act as the guardian of his person; and that an allowance of £—— should be made for his maintenance out of the income of his said property.

Your petitioner therefore humbly prays:

1. That the said C. D., or some other proper person, may be appointed to act as the guardian of the person of your petitioner during his minority, or until further order.

2. That the costs of this application may be taxed, and raised and paid out of the said £——, bank 3*l.* per cent. annuities [*or as may be*].

(*c*) See Dan. Pr. 1214.

(*d*) *Ibid.*, 1214—1215. The allegations suggested in this form can be readily framed from No. 1467, *ante*.

(*dd*) See *Re Tayler*, 2 De G. F. & J. 125.

3. That out of the interest to accrue from time to time on the residue of the said annuities, the annual sum of £—— may be allowed for the maintenance of your petitioner; and be paid half yearly to his said guardian, until further order.

4. That the residue of the said interest may be laid out in like annuities, and accumulated.

Or that your lordship (*Conclude as in* No. 57, *ante; and add footnote*, No. 58).

1507.

Summons for the like (*e*).

Formal parts: see ante, No. 60.

on the part of A. B., a person of unsound mind not so found, by C. D., of (*residence and addition*), his next friend:

1. That the said C. D., or some other proper person, may (*Continue as in the prayer of* No. 1506, *ante, to the end of clause* 4 *thereof; but describe, distinctly, the fund to be operated upon*).

1508.

Affidavit in support of petition or summons (*e*).

Formal parts: see ante, No. 9.

1. *See ante*, No. 1481, par. 1—3.

2. *Prove by a medical man the present state of mind of the petitioner or applicant: see ante*, No. 127.

1509.

Petition, under the Pauper Lunatic Acts, for payment of maintenance out of a fund in Court (*f*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*), treasurer of the county of C. [*or as may be*].

Showeth as follows:

1. *State the lunatic's title to the fund in Court, sought to be dealt with.*

2. *State how the lunatic has become chargeable to the parish, union, or county.*

3. *State the expense incurred in his maintenance, &c.; and any order made by the Justices for the repayment thereof.*

Your petitioner therefore humbly prays, as follows:

1. That the costs of your petitioner of and relating to this application may be taxed, as between solicitor and client.

2. That the said £—— (*Describe the fund in Court*) may be sold.

(*e*) See Dan. Pr. 1214.

(*f*) 7 & 8 Vic. c. 101, s. 27; 8 & 9 Vic. c. 100, s. 95; 12 & 13 Vic. c. 103, s. 16; 16 & 17 Vic. c. 97, ss. 94—104; and Dan. Pr. 1215; Seton, 1109—1111. For form of order for payment to the treasurer of a county of a sum for past maintenance, and of future maintenance, from time to time: the amount to be verified by affidavit: see Seton, 1109. As to the evidence in support of an application under these Acts, see Seton, 1110.

3. That out of the money to arise by such sale, the said costs may be paid to the solicitor of your petitioner; and that the residue of such money may be paid to your petitioner as treasurer of the said county of C. [*or as may be*], in part satisfaction of the said sum of £—— due to him as aforesaid, in respect of the said lunatic E. F.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1510.

Summons for the like (*g*).

Formal parts: see ante, No. 60.

on the part of A. B. (*&c. as in* No. 1509, *ante*):

1. That the costs of the said A. B., of and relating to this application, may be taxed as between solicitor and client.

2. That the £—— (*Describe the fund: according to the Accountant-General's voluntary certificate*), may be sold.

3. That out of the money to arise by such sale, the said costs may be paid to the solicitor of the said A. B.

4. That the residue of such money may be paid to the said A. B., as treasurer of the county of C. [*or as may be*], in part satisfaction of the sum of £—— due to him for the maintenance and support, to the —— day of ——, 187—, of (the said) E. F., a pauper lunatic.

Section VII.—The Chief Clerk's Certificate (*h*).

1511.

Chief Clerk's certificate of the result of accounts and inquiries, under a decree in a suit for general administration of a testator's estate (*i*).

In Chancery.

(*Title of the* (*matter and*) *cause, and reference to the record.*)

In pursuance of the directions given to me by the Master of the Rolls [*Or*, Vice-Chancellor ——], I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the decree [*Or*, order] made in this (matter and) cause dated the —— day of ——, 187—, is as follows:

(*g*) See note (*f*) to No. 1509, *ante*.

(*h*) As to general and separate certificates by the Chief Clerk, of the result of proceedings before him, see Dan. Pr. 1215—1227; 15 & 16 Vic. c. 80, s. 32; Ord. XXXV. 45—56.

(*i*) See Dan. Pr. 1215, 1216; and form of decree, No. 870, *ante*. The form here given is adapted from the Form in Sched. M. to Cons. Ord.: which may be used with such variations as the circumstances of the case may require: Ord. XXXV. 48. As to the form and contents of the certificate, see generally. Dan. Pr. 1216, 1217; Ord. XXIII. 15; XXXV. 48. For other forms of certificates, see *Index*, Certificate (Chief Clerk's).

The plaintiffs and defendants,
except the defendant X. Y. : who has not, nor has any person on his behalf, attended, although duly summoned, as by the affidavit of W. U., filed ——, 187—, appears,
and also A. B. and C. D. : who, having been served with notice of the said decree [*Or*, order], by an order, dated the ——, 187—, had liberty to attend the proceedings (*j*) : have attended by their respective solicitors.

Parties attending (*j*).

Notice of the said decree [*Or*, order] of the ——, 187—, has been served upon E. F. and G. H.

Service of notice of decree (*k*).

The persons so served and attending as aforesaid include all the residuary legatees now living of J. K., the testator in the said decree [*Or*, order] of the ——, 187—, named, and the legal personal representatives of such of them as are dead : except such as are parties to this suit ; and except L. M. and N. O. hereinafter named.

Members of a class.

Service of notice of the said decree [*Or*, order] upon the said L. M. and N. O. was dispensed with [*or as may be*].
The evidence produced relative to such service and dispensing with service consists of the Record and Writ Clerk's certificate dated ——, 187—, and of the affidavit of S. T., filed ——, 187— (*l*).

Service dispensed with.

1. The defendant P. R., one of the executors of the said testator J. K., has received personal estate (*If so :* not specifically bequeathed) of the said testator to the amount of £—— ; and he has paid, or is entitled to be allowed on account thereof, sums to the amount of £—— ; leaving a balance due from him of £—— on that account.

(1). Personal estate account (*m*).

The particulars of the above receipts and payments appear in the account marked A. (*n*), verified by the affidavit of the defendant P. R. filed the ——, 187—, and which account is to be filed with this certificate ; except that in addition to the sums appearing in the said account to have been received, the said defendant is charged with the following sums, namely : (*Specify them*) ; and except that of the items of disbursement in the said account, I have disallowed those numbered 18 and 23 ; and I have deducted £5 from the item numbered 11, and £3 from the item numbered 15 ; and in addition to the items appearing in the said account, the said defendant has paid and been allowed the following sums ; namely : (*Specify them*).

Reference to account.

Variations from account.

(*j*) As to obtaining leave to attend proceedings, see *ante*, No. 271, *et seq.*

(*k*) As to such service, see *ante*, No. 252, *et seq.*

(*l*) It must be shown by the affidavit of service, or otherwise, that the persons appearing by the Record and Writ Clerk's certificate to have been served are the same as the persons directed or required to be served : as the certificate alone is insufficient for this purpose.

(*m*) See *ante*, Nos. 870 (1), 871 (3), 1291, 1294, 1295.

(*n*) *Ibid.*, 1291 (4), 1292, 1294, 1295.

Reference to a transcript (*o*).

Where a transcript is to be filed, substitute for the above, the following: The defendant P. R. has brought in his account, marked A., of his said receipts and payments, verified by his affidavit filed the ——, 187—, and which account is to be filed with this certificate. The said account marked A. has been altered; and the account marked A. B., which is also to be filed with this certificate, is a transcript of the said account marked A. as altered and passed.

Special allowances in account.

The payments allowed to the defendant P. R. include the sum of £—— paid by him on the —— day of ——, 187—, into the bank, with the privity of the Accountant-General, to the credit of this cause, pursuant to an order dated ——, 187—. Such payments also include sums invested by the said defendant in the purchase of £——, bank 3*l.* per cent. annuities in his name; and which sum of bank annuities the said defendant on the ——, 187—, transferred into the name of the Accountant-General, in trust in this cause, pursuant to an order dated ——, 187—.

No personal estate received (*p*).

The defendant V. D., the other executor of the said testator, has not, nor has nor have any person or persons by his order, or for his use, received any part of the personal estate (*If so:* not specifically bequeathed) of the said testator.

(2). Funeral expenses (*q*).

2. The funeral expenses of the testator, amounting to the sum of £——, have been paid, and are allowed the defendant P. R., the executor of the said testator, in the said account of personal estate.

(3). Debts (*r*).

3. The debts of the testator which have been allowed are set forth in the first schedule hereto (*s*); and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £——. No other person has come in and proved any debt against the estate of the testator; and the time fixed by advertisement (*t*) for that purpose has expired. Such of the said debts as are specialty are set forth in the first part of the said schedule, and amount to £——; and such as are simple contract are set forth in the second part of such schedule, and amount to £——.

Interest thereon (*u*).

The interest on such debts is computed down to the date of this certificate, and after the rate of 4*l.* per cent. per annum, from the ——, 187—, the date of the said decree [*Or*, order]: unless otherwise specified in the said schedule.

No debts.

Or, if no debts: There is not any debt of the said testator remaining unpaid. No person has come in and proved any debt

(*o*) See Dan. Pr. 1217; Ord. XXXV. 46.
(*p*) See *ante*, Nos. 1297—1299.
(*q*) *Ibid.*, 870 (3), 871 (2), 1291 (2).
(*r*) *Ibid.*, 870 (2), 871 (1), 1235, *et seq.*
(*s*) *Ibid.*, 1256.
(*t*) *Ibid.*, 1235.
(*u*) *Ibid.*, 1256, n. (*l*).

against the estate of the said testator, and the time fixed by advertisement for that purpose has expired.

Advertisements have been published in the London Gazette of the ——, 187— ; in the (*State in what other newspapers, and of what dates*). Advertisements for creditors (*x*).

4. The legacies given by the testator : other than annuities : are set forth in the first part (*z*) of the second schedule hereto; and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £——. The annuities given by the testator, with the arrears due thereon, are set forth in the second part (*a*) of the said second schedule. Such arrears amount to £——. (4). Legacies and annuities (*y*).

The interest on such legacies is computed down to the date of this certificate, and after the rate of 4*l.* per cent. per annum from the ——, 187—, the end of one year after the testator's death : unless otherwise specified in the said schedule. Interest on legacies (*b*).

The arrears of the said annuities are computed down to the date of this certificate, and from the testator's death : unless otherwise specified in the said schedule. Arrears of annuities (*c*).

5. The personal estate of the testator (*If so :* not specifically bequeathed) outstanding or undisposed of, consists of the particulars set forth in the third schedule hereto (*e*). (5). Outstanding estate (*d*).

6. The real estate which the testator was seised of, or entitled to, at the time of his death [*or as may be*] consists of the particulars set forth in the fourth schedule hereto (*g*). (6). Real estate (*f*).

7. The incumbrances affecting the said testator's real estate are set forth in the fifth schedule hereto (*i*). (7). Incumbrances on real estate (*h*).

8. The defendant P. R., one of the trustees named in the said decree [*Or*, order], has received rents and profits of the testator's real estate to the amount of £—— ; and he has paid, or is entitled to be allowed on account thereof, sums to the amount of £——: leaving a balance due from him of £—— on that account. The particulars of the above receipts and payments appear in the (8). Rents and profits account (*k*).

(*x*) See *ante*, No. 1235.
(*y*) *Ibid.*, 870 (4), 1259, 1260.
(*z*) *Ibid.*, 1259.
(*a*) *Ibid.*, 1260.
(*b*) *Ibid.*, 1259, n. (*q*).
(*c*) *Ibid.*, 1260, n. (*r*).
(*d*) *Ibid.*, 870 (5), 871 (4), 1291 (4), 1294, 1295.
(*e*) *Ibid.*, 1291, Sched. 2.
(*f*) *Ibid.*, 870 (6), 871 (5), 1291 (5), 1296.
(*g*) *Ibid.*, 1291, Sched. 3.
(*h*) *Ibid.*, 870 (8), 871 (6), 1291 (6).
(*i*) *Ibid.*, 1291, Sched. 4.
(*k*) *Ibid.*, 870 (7), 1291 (7), 1294, 1296.

account marked B. (*l*), verified (*&c.: Continue as in the clause above as to personal estate received, in so far as applicable*).

No rents and profits received(*m*).

The defendant V. D., the other trustee named in the said decree [*Or*, order], has not, nor has nor have any person or persons by his order, or for his use, received any sum or sums of money on account of the rents and profits of the testator's real estate.

Statement of the evidence produced on each account and inquiry.

After each statement, the evidence produced is to be stated; as follows:

The evidence produced on this account [*Or*, inquiry] consists of (*State what; as thus:* the probate of the testator's will; the affidavit of A. B., filed ——, 187—; and paragraph 16 of the affidavit of C. D., filed ——, 187—; *and see ante*, No. 1194).

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

Approved this —— day of ——, 187—.

(*Signature of Judge.*)

The first schedule above referred to.

(*Insert particulars of debts allowed: see ante*, No. 1256.)

The second schedule above referred to.

(*Insert particulars of legacies and annuities: see ante*, Nos. 1259, 1260.)

The third schedule above referred to.

(*Insert particulars of the outstanding estate: see ante*, No. 1291, *and 2nd schedule thereto.*)

The fourth schedule above referred to.

(*Insert particulars of the real estate: see ante*, No. 1291, *and 3rd schedule thereto.*)

The fifth schedule above referred to.

(*Insert particulars of the incumbrances affecting the real estate: see ante*, No. 1291, *and 4th schedule thereto.*)

1512.

Summons to settle the draft of the certificate (*n*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], to settle the draft of the Chief Clerk's certificate, under the decree [*Or*, order] dated the —— day of ——, 187—.

1513.

Notice of appointment to settle the draft certificate (*n*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

Take notice that the Chief Clerk of his lordship the Master of

(*l*) See *ante*, No. 1293.

(*m*) *Ibid.*, 1297, 1298.

(*n*) See Dan. Pr. 1213. As to the preparation and settlement of the draft

the Rolls [*Or*, of his honour the Vice-Chancellor ——], has appointed (Monday), the ——day of ——, 187—, at —— of the clock in the ——noon, at his Chambers in the Rolls' Yard [*&c.: see ante*, No. 1123], to settle the draft of his certificate under the decree [*Or*, order] dated the —— day of ——, 187—.

1514.

Summons to take the opinion of the Judge (*o*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], to take my opinion upon the result of the proceedings under the decree [*Or*, order] dated the —— day of ——, 187—, as certified by the certificate of my Chief Clerk dated the —— day of ——, 187— ; and that the said certificate may be reviewed or altered in the following respect, that is to say : (*Show how ; as thus :*

by stating in the first paragraph of the said certificate that the amount received by the applicant in manner therein mentioned is the sum of £1,548, and not the sum of £1,048 as therein stated) ;

and that such consequential corrections and alterations may be made in the said certificate as may be necessary.

1515.

Summons to vary certificate (*p*).

Formal parts : see ante, No. 60.

on the part of the plaintiff [*or as may be: see ante*, No. 1226], that the certificate of my Chief Clerk dated the —— day of ——, 187—, of the result of the proceedings under the decree [*Or*, order] dated the —— day of ——, 187—, may be varied or altered as follows ; namely : (*Show how ; as thus* :

by disallowing the debt, interest, and costs, amounting together to £——, thereby certified to be due to D. E.) ;

and that such consequential directions may be given, or corrections and alterations made in the said certificate, as may be necessary.

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certificate, and when a summons, and when a notice of the appointment, to settle the draft is required, and as to transcribing the draft, see *ib.* 1218, 1219 ; Ord. XXXV. 48. The transcript must bear a 20*s.* fee fund stamp : Regul. to Ord. Sched. 4 ; *post*, Chap. XXXI. An *ad valorem* fee is payable, in addition, for every certificate upon passing a receiver's or consignee's account : Dan. Pr. 1219, n. (*a*) ; *post*, Chaps. XXXI., XXXIX.

(*o*) See Dan. Pr. 1218. As to applications to take the opinion of the Judge on the certificate, and the time allowed for that purpose, see Dan. Pr. 1219, 1220 ; 15 & 16 Vic. c. 80, s. 33 ; Ord. XXXV. 45, 49, 50, 53, 54 : XXXVII 11. As to the approval and signature of the Judge, see Dan. Pr. 1220 ; 15 & 16 Vic. c. 80, s. 32 ; Ord. XXXV. 51. As to the approval by a Judge, during vacation, of a certificate made by another Judge's Chief Clerk, and as to applications to vary the same, see Dan. Pr. 1221, 1222 ; Ord. XXXV. 59. As to the filing of the certificate, see Dan. Pr. 1221 ; 15 & 16 Vic. c. 80, s. 34 ; Ord. I. 44—47, 49 ; XXXV. 55, 56. As to office copies, see Dan. Pr. 1221 ; Ord. I. 44 ; XXXVI. 1, 2.

(*p*) See Dan. Pr. 1222. As to applications to vary a certificate, and the

1516.
Notice of adjournment of the summons to vary, to come on in Court (*q*).

Formal parts : see ante, No. 1263.
The summons to vary the certificate in this (matter and) cause is adjourned into Court ; and is to be set down in the cause book : to come on at the same time as this (matter and) cause is to be heard on further consideration.

Or, and is to come on at the same time as the petition of the plaintiff, presented on the —— day of ——, 187—, in this (matter and) cause, comes on for further hearing—*or as may be.*

1517.
Notice of such summons having been set down to come on with the cause on further consideration (*q*).

Formal parts : see ante, No. 54.
Take notice, that the summons dated the —— day of ——, 187—, taken out on behalf of the plaintiff [*or as may be*], to vary the Chief Clerk's certificate dated the —— day of ——, 187—, and which was adjourned into Court, has been this day set down in the cause book : to come on at the same time as this (matter and) cause is to be heard on further consideration.

1518.
The like, to come on with an adjourned petition (*q*).

Proceed as No. 1517, *ante, to* Court ; *and add :*
has been this day set down in the Registrars' paper of adjourned petitions : to come on at the same time as the petition of the plaintiff [*or as may be*] presented on the —— day of ——, 187—, in this (matter and) cause, comes on for further hearing.

1519.
Notice of motion, to vary certificate (*r*).

Formal parts : see ante, No. 55.
on the part of the plaintiff [*or as may be : see ante*, No. 1226], that the certificate of the Chief Clerk dated the —— day of ——, 187—(*Continue as in* No. 1515, *ante*, to the end.)

1520.
Direction to file copy certificate, in place of original, where original lost (*s*).

I certify that this is a true copy of a certificate which was duly stamped, signed, and approved.

R. M., Chief Clerk.

Let this be put on the files of the Court as of the ——, 187— (*Date when original certificate due*).

(*Signature of Judge.*)
——, 187—.

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time allowed for that purpose, and as to opening a certificate after it has become binding, see *ib.*, 1222, *et seq.* ; 15 & 16 Vic. c. 80, s. 34 ; Ord. XXXV. 52—54 ; XXXVII. 11, 12.

(*q*) See Dan. Pr. 1224.

(*r*) *Ibid.*, 1222, 1225. As to the time for which the notice should be given, see *ib.*, 1224, 1225, n. (*m*).

(*s*) *Re Perkins, Perkins* v. *Perkins*, M. R. at Chambers, 26 July, 1870. The certificate and fiat were written in the margin of the first page of the copy certificate.

CHAPTER XXX.

THE FURTHER CONSIDERATION OF CAUSES (*a*).

1521.
Request that a cause commenced by bill may be set down for further consideration (*b*).

In Chancery.

(*Short title, and reference to the record.*)

I request that this cause, the further consideration whereof was adjourned by the decree [*Or*, order] of the —— day of ——, 187—, may be set down for further consideration before his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——]. Dated this —— day of ——, 187—.

C. D., solicitor for the plaintiff [*Or*, defendant E. F.].

1522.
Consent of all parties to the cause being set down prematurely (*c*).

In Chancery.

(*Short title, and reference to the record.*)

We request and consent that this cause, the further consideration whereof was adjourned by the decree [*Or*, order] of the —— day of ——, 187—, be set down forthwith for further consideration before his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], notwithstanding eight days have not expired since the Chief Clerk's certificate was filed.

If so: and that this cause may be placed in the paper of short causes for hearing before the said Judge on the next short cause day [*Or*, on the —— day of ——, 187—].

Dated (*&c.: Conclude as in* No. 864, *ante*).

(*a*) As to further consideration generally, see Dan. Pr. 1228—1237. For forms of decree adjourning further consideration, see *ante*, Nos. 870, 871; Seton, 56. As to setting down the cause for further hearing after the trial of a question of fact, see Dan. Pr. 1015, *et seq.*; and *ante*, No. 1102; and as to setting down a cause for hearing on further directions, see Dan. Pr. 1233, n. (*q*). As to the proof on further consideration of matters not directly in issue, see Dan. Pr. 1229, 1236, 1237; 13 & 14 Vic. c. 35, s. 28.

(*b*) See Dan. Pr. 1233; Ord. XXI. 10. For the mode of setting down the cause, see Dan. Pr. 1233; Reg. Regul. 15 Mar. 1860, rr. 1, 9.

(*c*) See Dan. Pr. 1233, n. (*r*).

1523.
Notice that the cause has been set down (*d*).

Formal parts : see ante, No. 54.

Take notice, that this cause, the further consideration whereof was adjourned by the decree [*Or*, order] of the —— day of ——, 187—, was this day [*Or*, on the —— day of ——, 187—] set down for further consideration before his lordship the Master of the Rolls [*or as may be*], for the —— day of ——, 187—.

1524.
Summons for leave to serve the notice out of the jurisdiction (*e*).

Formal parts : see ante, No. 60.

on the part of the plaintiff, that he may be at liberty to serve a notice that this cause, the further consideration whereof was adjourned by the decree dated, *&c.*, was, on the 7th December, 1866, set down for further consideration before his lordship the Master of the Rolls for the 18th December, 1866, together with a copy of the order to be made hereon, upon the defendant J. N., at Edinburgh, or elsewhere in Scotland.

1525.
Certificate of counsel that cause is fit to be heard short (*f*).

In Chancery.

(*Short title.*)

I certify that this cause is fit to be heard on further consideration as a short cause.

X. Y., counsel for the plaintiff,
——, 187—.

1526.
Notice that cause has been marked as short (*g*).

Formal parts : see ante, No. 54.

Take notice, that this cause has been marked for hearing on further consideration as a short cause, in the Registrars' book of causes standing for hearing.

1527.
Consent to cause being prematurely heard (*h*).

In Chancery.

(*Short title, and reference to the record.*)

We consent to this cause being placed in the paper of short causes for hearing on further consideration before the Master of the Rolls [*Or*, Vice-Chancellor ——], on the —— day of ——, 187—. Dated (*&c.: Conclude as in* No. 864, *ante*).

(*d*) See Dan. Pr. 1234; Ord. XXI. 10. The notice must be served at least six days before the day for which the cause is marked for further consideration : *ib.* As to the parties to be served with the notice, see Dan. Pr. 1235. For forms of affidavit of service of the notice, and of having been served therewith, see *ante*, Nos. 47, 52. For form of notice to a purchaser, see *ante*, No. 1431. As to the papers to be left with the Judge, see Dan. Pr. 1235.

(*e*) *Overton* v. *Niven*, M. R. at Chambers, 8 Dec. 1866, Reg. Lib. A. 2451.

(*f*) See Dan. Pr. 1234; Reg. Regul. 15 Mar. 1860, r. 10.

(*g*) See Dan. Pr. 1234. For forms of affidavit of service of the notice, and of having been served therewith, see *ante*, Nos. 47, 52.

(*h*) See Dan. Pr. 1234; Reg. Regul. 15 Mar. 1860, r. 10; and *ante*, No. 1522.

1528.
Summons for further consideration of a cause originating in Chambers (*i*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*Or*, defendant A. B.—*or as may be*], that this cause, the further consideration whereof was adjourned by the order of the —— day of ——, 187—, may be further considered.

1529.
Consent to summons being issued, and made returnable, prematurely (*k*).

In Chancery.
(*Short title, and reference to the record.*)
We consent to a summons for the further consideration of this cause being issued and made returnable forthwith [*or as may be*]. Dated this —— day of ——, 187—.
G. H., solicitor for the defendant E. F.
L. & O., solicitors for the remaining defendants.

1530.
Note of adjournment into Court of the hearing on further consideration (*l*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers.
(*Short title.*)
The further consideration of this matter and cause is adjourned into Court: to be set down in the cause book after the causes already set down for further consideration.
If for a special day, add: and to be put into the paper for further consideration on ——, the —— day of ——, 187—.
Dated this —— day of ——, 187—.
R. M., Chief Clerk.
N.B. Notice hereof is to be given to the solicitors for all parties in the cause.

1531.
Notice that cause so adjourned has been set down in the Registrars' book (*m*).

Formal parts: see ante, No. 54.
Take notice, that this cause has been set down for further consideration—*If so:* as a short cause—before his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], in the Registrars' book of causes standing for hearing.

(*i*) See Dan. Pr. 1234; Regul. 8 Aug. 1857, r. 18. This summons must be served six clear days before the return: *ib.* As to the parties to be served with the summons, see Dan. Pr. 1235. For forms of affidavit of service of the summons, and of having been served therewith, see *ante*, Nos. 50, 52.

(*k*) See Dan. Pr. 1234, n. (*b*).

(*l*) *Ibid.*, 1234. In the Chambers of V. C. Stuart, no direction will be given for hearing the cause as a short cause: *ib.* n. (*d*).

(*m*) See Dan. Pr. 1234. For forms of affidavit of service of the notice, and of having been served therewith, see *ante*, Nos. 47, 52. As to the papers to be left for the Judge, see Dan. Pr. 1235.

1532.

Brief on further consideration (*n*).

In Chancery.

(*Name of Judge.*)

(*Full title, and reference to the record.*)

(1). Contents.

Brief, on further consideration, for the plaintiff [*Or*, defendant A. B.—*or as may be*].

——, 187— (*o*). By the decree [*Or*, order] of this date, made by his lordship the Master of the Rolls [*or as may be*], on the hearing of this cause, it was declared [*Or*, ordered] that (*Set out, in the past tense, the whole of the decree or order made at the former hearing, except the title and recital of the evidence: introducing each separate declaration or direction by a new line* (*p*)).

——, 187— (*o*). By the certificate of A. B., esquire, the Chief Clerk of the said Master of the Rolls [*Or*, Vice-Chancellor ——], of this date, and approved by the said Judge on the —— day of ——, 187—, and filed on that day [*Or*, on the —— day of ——, 187—], he certified that, in pursuance of the said decree (*Set out, in the past tense, the certificate* (*q*)*: introducing by a new line each separate finding; and placing in the margin the numbers of the directions answered* (*r*)).

Observations.

(*Set out such observations as may be deemed advisable.*)

(2). Indorsement (*s*).

The same as No. 867, *ante*; adding "on further consideration," after "on the hearing."

(*n*) See Dan. Pr. 1236, n. (*l*). The brief should be accompanied by the brief and other papers held by counsel at the former hearing: *ib.* As to consultation and refresher and other fees and costs, see *ib.*, 841, n. (*z*).

(*o*) The dates of the documents briefed should be placed in the margin.

(*p*) Any intermediate orders to revive or carry on proceedings, or otherwise, or certificates of the Chief Clerk, material to the further consideration, should here follow: each such order or certificate being introduced by a new line.

(*q*) The statements, in the certificate, of the evidence produced on the various accounts and inquiries are usually omitted in the brief in cases where nothing is likely to turn thereon, at the hearing.

(*r*) No part of the schedules to the certificate, or of any account filed therewith, should be set out in the brief, unless the special circumstances of the case may render the same necessary: Dan. Pr. 1236, n. (*l*). If any affidavits, material to the further consideration, have been filed since the certificate, they should be briefed: to follow the certificate.

(*s*) See Dan. Pr. 1236, n. (*k*). For the practice as to drawing up, passing, entering, enrolling, and enforcing an order on further consideration, see *ib.* 1237; and see *ante*, No. 873, *et seq.*, and notes thereto. As to the papers to be left on bespeaking the order, see Dan. Pr. 1237; Ord. I. 20; Reg. Regul. 15 Mar. 1860, rr. 16, 17, 29, 30. For forms of orders on further consideration, see Seton, 38, 39; 140, *et seq.*; 159, *et seq.*; 239, *et seq.*; 256, *et seq.* As to the fee payable on the order, see Regul. to Ord. Sched. 4; and *post*, No. 1554 (3).

CHAPTER XXXI.

COSTS (*a*).

Section I.—Obtaining copies of Documents from the Record and Writ Clerks' and Report Offices.—Inspection and Production of Records.

1533.

Copies to be made by the officers of the Court (*b*).

1. The following copies are to be made by the officers of the Court; that is to say—(1) Office copies of proceedings filed in the Report Office; (2) Office copies of answers, exceptions, pleas, and demurrers; (3) Office copies of depositions of witnesses and examinations of parties: to be made for, and taken by, the party on whose behalf such depositions and examinations are taken; (4) Office copies of affidavits: to be made for, and taken by, the party filing the same; (5) And office copies of affidavits to be taken under the 39th rule of Ord. XXXV. (*c*). And such copies must be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that usually adopted by law-stationers; and must be made by the persons, in the manner, and at the charges (collected by means of stamps), mentioned and prescribed in and by the regulations subjoined to the Consolidated Orders (*d*), and such other regulations as shall for the time being be made in that behalf; and, subject thereto, by the persons by whom, and in the manner, and at the charges, in and at which they were made before those orders.

(*a*) As to costs in general, see Dan. Pr. 1238—1243. As to costs from one party to another, see Dan. Pr. 1243—1271. As to costs out of the fund, see Dan. Pr. 1271—1297. As to the principles of taxation, see Dan. Pr. 1298—1306. As to the method of taxation, see Dan. Pr. 1307—1319; and *post*, Nos. 1574—1584. And as to enforcing payment of costs, see Dan. Pr. 1319—1328; and *post*, Nos. 1585—1608. As to the delivery of bills of costs and taxations, on applications under the Solicitors' Acts, see Dan. Pr. Chap. XLIV.; and *post*, Chap. XLIV.

(*b*) Ord. XXXVI. 1, 2; Dan. Pr. 879.

(*c*) See *post*, No. 1536 (9), and notes thereto.

(*d*) *Ibid.*, 1547, 1554.

2. No office copy of any pleadings, decrees, or orders is to be delivered out of the office of the Clerks of Records and Writs (*e*), or be capable of being used in Court, or in the Judges' Chambers, unless the same shall have been signed by one of the Clerks of Records and Writs ; and no costs of any such copy not so signed are to be allowed on any taxation of costs.

1534.

Memorandum to be used on bespeaking an office copy at the Report Office (*f*).

Name and address of party bespeaking office copy.	Title of suit [*Or*, matter].	Document (*g*).	Date of certificate [*Or*, Date and folio of order in book of entry—*or as may be*].
Date of Search.			

1535.

The like, at the Record and Writ Clerks' Office (*h*).

Name of solicitor or party bespeaking office copy.	Name of cause or matter.	Document (*i*).	When filed.
Date of bespeaking office copy.			

(*e*) Or Report Office: see 18 & 19 Vic. c. 134, s. 6; Dan. Pr. 879.

(*f*) See *ante*, No. 1533; and Dan. Pr. 768.

(*g*) Describe the document, shortly; as thus: "decree," or "order," or "Chief Clerk's certificate."

(*h*) See *ante*, No. 1533.

(*i*) Describe the document, shortly; and, if an affidavit, add also the deponent's name.

1536. Practice of the Record and Writ Clerks' Office, as to copies supplied therefrom (*j*):

(1) How made.

Office copies are written on foolscap paper, bookwise, and contain two folios on each side. An office copy will not be made of a portion only of a record: except where, under 14 & 15 Vic. c. 99, s. 14, an extract is required to be given in evidence at law (*k*).

(2) Who must or may take office copies of records.

An office copy of any record may, after decree, be taken by any person: whether a party to the record or not; but before the cause has been heard, the making and delivering out of office copies of records are subject to the restrictions hereinafter mentioned (*l*).

(3) Office copies of bills.

Office copies of bills may be taken by any parties to the cause. It is not, however, required that a defendant shall take an office copy of the bill before filing his answer: unless it be an answer to a bill filed before the 2nd November, 1852 (*m*). Even before decree the Clerks of Records and Writs exercise, in certain cases, a discretion in favour of persons applying for office copies of bills, though not parties to the cause, upon consideration of the circumstances of the particular case. Thus, where the bill has been registered as a *lis pendens*: or the suit is on behalf of creditors, and the application is made by a creditor: an office copy has been permitted to be taken before decree.

(4) Office copies of interrogatories.

Copies of interrogatories for service are made by the plaintiff's solicitor, but must be examined with the original, and the number of folios counted, by the Clerks of Records and Writs: who, if the copies are duly stamped and properly written, will mark them as office copies. The copy for service on any defendant should only contain the interrogatories which he is required to answer. The copies are usually written on brief paper (*n*).

(*j*) See Braithwaite's Pr. 487.

(*k*) *Ibid.*, 489; Dan. Pr. 768. The office copy is counted and charged for at 4*d.* per folio, after the rate of seventy-two words per folio; or, to a pauper, one penny half-penny for a like folio: see *post*, No. 1550 (4). A copy of an affidavit made by a solicitor or party will, at his request, be marked as an office copy, after the examination thereof by the officer with the original, and on the proper fee fund stamps, at the rate above mentioned, being impressed on, or affixed to, the copy: Dan. Pr. 794; Braithwaite's Pr. 488.

(*l*) See Braithwaite's Pr. 489.

(*m*) *Ibid.* As to office copies of new engrossments of bills filed before 2 Nov., 1852, see Braithwaite's Pr. 490.

(*n*) See Ord. XI. 4; Dan. Pr. 406.

(5) Office copies of answers.

As to furnishing the plaintiff with an official and certified printed copy of a defendant's answer, see *post*, No. 1556. Office copies of schedules to answers of accounts or documents continue to be made in the Record and Writ Clerks' Office (*o*).

(6) Office copies of exceptions.

The party whose pleading is excepted to takes an office copy of the exceptions (*p*).

(7) Office copies of demurrers and pleas.

An office copy of a demurrer, or plea, should be taken by the plaintiff (*q*).

(8) Office copies of affidavits and depositions required to be printed.

See *post*, No. 1561.

(9) Office copies of affidavits not required to be printed.

The party filing an affidavit should in all cases take an office copy of it: except that, in the case of an affidavit filed by a claimant coming in pursuant to advertisement under a decree, the office copy is to be taken by the party prosecuting the cause or matter, unless the Judge otherwise directs (*r*). It seems the exception extends, in practice, to office copies of further affidavits filed in support of a disputed claim, and to affidavits filed in opposition (*s*). Office copies of affidavits will be made for any person, whether a party to the cause or matter or not, and at any time (*t*).

(10) Office copies of examinations and depositions not required to be printed.

Any party to the suit or proceeding may, on payment of the proper fee (*u*), have a copy of the whole, or any portion, of the examinations or depositions of parties or witnesses taken by or

(*o*) Ord. 6 March, 1860, r. 10; Dan. Pr. 660.

(*p*) See Ord. XXXVI. 1, *ante*, No. 1533; Dan. Pr. 666.

(*q*) See Dan. Pr. 509, 598. As to demurrers and pleas, see *ante*, Nos. 493—504—524.

(*r*) Ord. XXXV. 39; XXXVI. 1, *ante*, No. 1533; *post*, No. 1563; Dan. Pr. 795. In Winding-up matters, office copies of affidavits are usually taken by the Liquidator.

(*s*) See Braithwaite's Pr. 487.

(*t*) *Ibid.*, 494. Where a mistake is discovered in an affidavit immediately after it has been sworn and left to be filed, but before it has been actually entered as filed: if an office copy of such affidavit has been marked, it may, upon the affidavit being resworn, be altered, without the same being restamped, on additional stamps of an amount sufficient to cover the increased length, if any, being affixed; the office copy must be re-examined in such case. An affidavit cannot, however, be resworn after it is filed: see Braithwaite's Pr. 494, 495; and *ante*, No. 12, n. (*x*).

(*u*) As to the fee, see *post*, No. 1554 (5).

before a Chief Clerk, or an Examiner, when filed at the Record and Writ Clerks' office (*v*).

(11) Office copies of summonses.

No office copy of the duplicate of an originating summons need be taken by any party thereto. An office copy may, however, be obtained by any party to the summons, at any time; and, after the summons has been heard, by any other person (*x*).

(12) Office copies of special cases.

The plaintiff must take an office copy of a special case; but the defendants need not do so (*y*). After the special case has been heard, any person may have a copy thereof (*z*).

(13) Office copies in partition cases (*a*).

An office copy of the certificate or return to a commission of partition, and of the plans annexed thereto, may be taken by any party interested in the partition; but a copy of the commission will be included in the office copy (*b*).

(14) Brief and close copies (*c*).

The Clerks of Records and Writs may, in cases requiring extraordinary despatch, permit the stationers employed in their office to make close or brief copies, as well as office copies; subject to the following provisions:—

I. The Clerks of Records and Writs are to provide:

(1). That such permission is not to be given to any stationer or copyist who is or may be a salaried clerk in the office.

(2). That such permission is not to be given in any case in which the making and delivering of a close or brief copy would in any manner delay the making or due delivery of the office copy.

II. No officer, or clerk in the office, is to become entitled to, or take, demand, or receive, any fee, gift, gratuity, emolument or advantage arising out of, or in any way to be derived from, the permission to make, or the making or delivery of, any such close or office (brief) copy (*d*). Where a solicitor loses an office copy previously taken by him, a close or brief copy may be made for him (*e*).

(*v*) See Ord. XXXV. 31; Dan. Pr. 1065.

(*x*) See Braithwaite's Pr. 491.

(*y*) 13 & 14 Vic. c. 35, s. 10.

(*z*) See Braithwaite's Pr. 490.

(*a*) *Ibid.*, 238, 492, 493; Dan. Pr. 1029.

(*b*) The copy is charged for at the rate of 4*d.* per folio: *post*, No. 1554 (5). Copies of plans are charged for only to the extent of the actual payment to the draughtsman. The office copy of the certificate is signed and stamped, in like manner as other office copies. Copies of plans are not usually bound up with the office copy, but delivered out separately. Each copy of a plan is, however, identified with the office copy by a memorandum thereon; and the office seal is impressed thereon.

(*c*) See Braithwaite's Pr. 496.

(*d*) *Ibid.*; Regulation of the Office, 10 Mar. 1845. This Regulation does not appear to be abrogated by Cons. Ord.: see Prel. Ord. 2.

(*e*) The charge for close or brief copies made in the office is two pence per folio of seventy-two words: including the paper. Payment for any such copy is made to the stationer.

(15) Copies of documents left in the office for safe custody (*f*).

The order directing the deposit of documents with the Clerk of Records and Writs for safe custody ordinarily provides, that the parties, their solicitors and agents, shall be at liberty to take copies thereof, or extracts therefrom, as they may be advised. Such copies or extracts may be made by the persons attending to inspect; but, if so desired, the office will make the same at the rate of 4*d.* per folio. Copies so made by the office are not usually in the form of, or regarded as, office copies; but if office copies are required, they will be made and marked, in like manner as ordinary office copies.

1537.

Memorandum to be used on inspecting an affidavit (*g*).

Solicitor's name.	Title of suit [*Or*, matter].	Date of inspection.

(*f*) See Braithwaite's Pr. 493.

(*g*) *Ibid.*, 510. Any person, whether a party to the cause or matter or not, may inspect an affidavit at any time after it is filed. The person applying to inspect must first ascertain, by searching in the "Index of Affidavits," the date on which the affidavit was filed. The officer will then procure the original affidavit for inspection. A fee of sixpence is payable for every application to inspect an affidavit: *post*, No. 1554 (5); but no fee is payable if the inspection is merely for the purpose of comparing an office copy with the original, or of bespeaking an office copy at the time of inspection. The original affidavits and Indexes thereto, now in the custody of the Clerks of Records and Writs, extend back to the 2nd November, 1842. The original affidavits and Registers of affidavits previously to that date are deposited in the Public Record Office, and extend as far back as the year 1615; but interruptedly prior to the year 1770. From Easter Term, 1615, to Hilary Term, 1746, there is a register or copy of every affidavit filed; but with interruptions as to some of the earlier dates. The Indexes to affidavits at the Record and Writ Clerks' Office are open to inspection, free of charge. The person requiring the information makes the search himself. Affidavits filed in causes are indexed under the title of the cause, by the letter of the first plaintiff's surname. Affidavits filed in suits commenced by administration summons are indexed under the first letter of the surname of the person whose estate is to be administered. Affidavits filed in "matters" are now indexed under the letter of the alphabet best answering to the title of the particular matter; but previously to the year 1852, such affidavits were entered promiscuously as to the title of the matter; and will be found entered according to the date of filing only, after the letter Z, in the Indexes to affidavits; and from Michaelmas Term, 1852, to the 31st December, 1855, affidavits in matters were entered in a separate book, but still promiscuously as to the title of the matter; and consecutive only with respect to the date of filing. Since 1855, all affidavits intituled in matters are indexed under the title of the particular matter; as well as in consecutive order as to the date of filing. See Braithwaite's Pr. 510, 511.

1538. Memorandum to be used on searching for, and inspecting, a record (*h*).

In Chancery.

(*Short title.*)

For searching for a record [*Or*, For searching for, and inspecting a record].

Cause began in [*Or*, about] the year ——.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party paying the fee: see ante*, No. 4, *or* 7.)

(*h*) A fee of two shillings is payable, in a fee fund stamp affixed to the memorandum, upon every application to search for a record, and for searching: see *post*, No. 1554 (5). No other fee is payable, notwithstanding the search may extend over many years. A fee of five shillings is payable, in like manner, upon every application to inspect a record, and for inspecting the same: *ib.* In giving instructions to search for a record, it is essential either that the names of the first named plaintiff and defendant in the cause should be stated, and the date when the suit was instituted; or, if such date is not precisely known, then the date of any decree or order made in the cause. The Indexes to causes, commonly called "Bill books," for the last preceding ten years are open to public inspection, free of charge. To search for a suit instituted more than ten years since, instructions in the above form must be given; and in such cases the search is made by the officer. Ordinarily, the result of the search will be made known to the parties on the day following that on which the instructions are given. The party may, however, himself make the search at once, if he pleases. The Indexes to causes and the records now in the custody of the Clerks of Records and Writs commence on the 28th October, 1842, the date of establishment of the Record and Writ Clerks' office, under 5 & 6 Vic. c. 103. Records filed previously to that date are deposited in the Public Record Office. As a rule, a record cannot be inspected by a person not a party to the record until after a decree has been made in the cause; but after decree any person may inspect a record, upon payment of the proper fee. Affidavits may, however, be inspected by any person at any time after they are filed; and with respect to other records, the Clerks of Records and Writs will in all cases exercise a discretion, and allow a person not a party to the cause to inspect, or take a copy of, a record, before decree. A defendant may inspect a co-defendant's answer, but not until after he has filed his own answer; or, in cases where no answer is required from him, after his time for answering voluntarily has expired. A defendant inspecting a co-defendant's answer must pay the usual fee payable on inspecting a record. If, however, he takes an office copy of the answer, the fee for inspection will be remitted. Before decree, the plaintiff may inspect the bill or answers, and a defendant may inspect the bill, or his own answer, without payment of any fee. After the suit is wound up, parties to the suit desiring to inspect the records therein must pay the like fees for inspection as are payable by persons not parties. An inspection of a record may be continued on subsequent days without payment of a further fee; but, unless otherwise requested by the person inspecting, the record will, after the first inspection, be at once returned to its place; and, in such case, if a further inspection be desired, the fees payable for searching and inspection must be again paid. In no case, however, will a record be allowed to remain out of its place for an indefinite period. Persons inspecting records may note

1539.
Examining copies for service (*i*).

Copies of bills to be served on formal parties may be examined with the original records (*k*). It is not, however, required in practice that the affidavit of service should do more than prove that the copies served were true copies (*l*).

1540.
Attendances in the Court or its offices, or elsewhere, with documents deposited (*m*).

For the Forms applicable to these cases, see *ante*, Nos. 738—742.

1541.
Memorandum to be used on bespeaking an attendance on an invalid (*n*).

In Chancery.

(*Short title, and reference to the record.*)

For the attendance of the Clerk of Records and Writs at ——, on ——, the —— day of ——, 187—, at —— of the clock in the —— noon, to swear A. B. to an affidavit [*Or*, answer—*or as may be*]: he being an invalid. Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party bespeaking the attendance: see ante*, No. 4, *or* 7.)

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down therefrom any dates or sums, or names of parties; but no continuous copying is allowed. Braithwaite's Pr. 500, 501.

(*i*) See Braithwaite's Pr. 31.

(*k*) No fee is payable on such examination.

(*l*) See Braithwaite's Pr. 31. As to service on formal defendants, see Dan. Pr. 353, *et seq.*; and for form of affidavit of service, see *ante*, No. 246.

(*m*) See notes to Nos. 738—742, *ante*. It is desirable that timely notice should be given of the required attendance; so that the records or documents may be searched for, and delay in their production prevented. As to the fees payable, see *post*, No. 1554 (5). The payment of the fee may be deferred till the cause or matter is about to come on. The officer will not attend until the fee is paid. On attending with exhibits in Court, or at Chambers, or before an examiner, if the documents are so numerous or heavy as to require the assistance of a porter, the solicitor or party requiring the attendance is expected to provide such assistance. Attendances in the Court of Chancery with records are made only at the request of the Judge.

(*n*) See Dan. Pr. 647. Upon every application to swear an invalid, including the attendance, a fee of 10*s*., besides necessary expenses, is payable: see *post*, No. 1554 (5). The necessary expenses comprise 1*s*. per mile for travelling expenses. The office fee is paid in fee fund stamps, affixed to the memorandum. The officer's expenses are paid to him in money: Braithwaite's Pr. 515. The Clerks of Records and Writs are not empowered to attend upon an invalid for the purpose of taking an affidavit or answer at any place distant more than ten miles from Lincoln's Inn Hall: *ib.*; and it is now more usual to procure the attendance of a London Commissioner: Dan. Pr. 647.

Section II.—Obtaining Copies of Documents from Parties or Solicitors.

1542

Copies to be made by parties or solicitors (*o*).

3. Copies of pleadings and other proceedings in the Court, and of the documents relating thereto: except such copies as are mentioned in Ord. XXXVI. r. 1 (*p*): instead of being made and delivered by the officers of the Court at the office in which they are filed or left, are to be made, delivered, charged, and paid for, according to the following rules:—

4. The party or his solicitor requiring any copy, save as excepted in the preceding rule, shall make a written application to the party by whom the copy ought to be delivered, or his solicitor, with an undertaking to pay the proper charges (*q*).

5. Upon such requisition being made, with such undertaking as aforesaid, copies of such pleadings, proceedings, or documents, shall be made by the party or his solicitor filing or leaving the same, or who under the 1st rule (*p*) may have taken office copies thereof.

6. The copies shall be ready to be delivered at the expiration of forty-eight hours after delivery of such request and undertaking, or within such other time as the Court may in any case direct; and shall be delivered accordingly on demand, upon payment of the proper charges.

7. Copies of bills of costs shall be made side for side: so as to correspond with the bills of costs left in the office.

8. The folios of all copies shall be numbered consecutively in the margin thereof; and the name and address of the party or solicitor by whom the same are made shall be indorsed thereon (*r*): in like manner as upon the proceedings in the Court; and such party or solicitor shall be answerable for every such copy being a true copy of the original, or of an office copy of the original pleading, proceeding, or document of which it purports to be a copy: as the case may be.

9. In cases of *ex parte* applications or injunctions, or writs of *ne exeat regno*, the party making such application shall deliver copies of the affidavits upon which it is granted, upon payment of the proper charges, immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

10. Any party or solicitor who has taken any office copy mentioned in the 1st rule (*p*), shall produce the same in Court,

(*o*) Ord. XXXVI. 3—12.

(*p*) *Ante*, No. 1533.

(*q*) For form of request and undertaking, see *post*, No. 1544. As to the proper charges, see *post*, No. 1550.

(*r*) For a form, see *ante*, No. 4, or 7.

or at the Judge's Chambers, when required for the purpose of the proceedings to which the same relates.

11. All copies to be delivered by parties or their solicitors shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner: similar to that which is usually adopted by law stationers; and unless such copies are so written, the parties or solicitors delivering them shall not be entitled to be paid for the same.

12. Where any party or solicitor who is required to deliver any such copy either refuses to deliver the same, or does not deliver the same within the period of forty-eight hours allowed by the 6th rule of this Order, the person making such application shall be at liberty to procure a copy from the office in which the original shall have been filed: in the same way as if no such application had been made to the party or solicitor; and in such case, no costs shall be due or payable to the party or solicitor so making default, in respect of the copy so applied for.

13. The Taxing Master shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to him to have been requisite, and to have been made with due care, both as regards the contents and the writing thereof.

1543.

Copies of bills (*s*).

The defendant is entitled, after appearance, to demand from the plaintiff any number of printed copies, not exceeding ten, of the plaintiff's bill, on payment for the same at the rate of one halfpenny per folio of seventy-two words.

1544.

Request to be furnished with copies, and undertaking to pay the charges (*t*).

In Chancery.

(*Short title of the cause or matter, and reference to the record.*)

We [*Or*, I] request to be furnished with the undermentioned copy [*Or*, copies]; and hereby undertake to pay the proper charges for the same; viz.:

(*Describe the pleading or other proceeding of which a copy or copies is or are required: as thus:*

One copy of the affidavit of A. B., filed ——, 187— (*u*).

One copy of the joint affidavit of A. B. and C. D., filed ——, 187—.

(*s*) 15 & 16 Vic. c. 86, s. 7; Ord. IX. 5; Dan. Pr. 327. As to obtaining an official and certified and other copies of a defendant's answer, see *post*, No. 1556.

(*t*) See *ante*, No. 1542; Dan. Pr. 795. The solicitor or party furnishing the copy is not bound to send it to the party applying for it: Braithwaite's Pr. 498, n. (*a*).

(*u*) See Dan. Pr. 795; and *ante*, No. 1542.

One copy of each of the affidavits of A. B., C. D., and E. F., filed ——, 187—.
Ten printed copies of the plaintiff's (amended) bill (*x*).
An official and certified printed copy, and ten other printed copies, of the answer of the defendant A. B. to the plaintiff's (amended) bill (*y*).
Six printed copies of the answer of the defendant C. D. to the plaintiff's bill (*y*).
One copy of the plaintiff's bill of costs (*z*).
One copy of the petition of appeal of the plaintiff (*a*).).
Dated (*&c. : Conclude as in* No. 54, *ante*).

SECTION III.—REGULATIONS AS TO SPECIAL EXAMINERS' FEES AND CHARGES, SOLICITORS' FEES AND CHARGES, COURT FEES, AND CHARGES FOR COPIES: SUBJOINED TO THE CONSOLIDATED ORDERS.

First Regulation : Special Examiners' fees and charges (*b*).

1545. First Regulation: Special examiners' fees and charges.

An examiner specially appointed by the Court shall, for the performance of his duty, be entitled to receive the sums of money set forth in the first schedule hereto (*c*).

Second Regulation : Solicitors' fees and charges (*d*).

1546. Second Regulation:

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "Lower scale," in the second

(*x*) 15 & 16 Vic. c. 86, s. 7; Ord. IX. 5; XL. 19; Dan. Pr. 327.
(*y*) See Ord. 6 Mar. 1860, rr. 4, 6, 8; Dan. Pr. 659, 660.
(*z*) See Dan. Pr. 1312.
(*a*) *Ibid.*, 1352. If the copy be refused or neglected to be furnished, an office copy of the petition may be obtained from the stationer in the Registrars' office: the fee for which will be 20*s.* higher scale, and 10*s.* lower scale, payable in fee fund stamps: see *post*, No. 1554 (3).
(*b*) Regul. to Ord. Sched. 1; see Dan. Pr. 801, n. (*y*). As to special examiners, see 15 & 16 Vic. c. 86, s. 31; and *ante*, Nos. 799—802, and notes thereto. As to the ordinary examiners, see *post*, No. 1558.
(*c*) *Post*, No. 1551.
(*d*) Regul. to Ord. Sched. 2. So far as regards all costs incurred before the 1st of February, 1857, solicitors are entitled to charge and be allowed the fees which they were entitled to charge and be allowed immediately before the Order of the 30th of January, 1857, was made: Ord. XXXVIII. r. 1. And so far as regards all costs incurred on and subsequently to the 1st of February, 1857, solicitors are entitled to charge and be allowed the fees set forth in the

(1) Lower scale (*e*). schedule hereto (*f*), in the several cases following, unless the Court should make order to the contrary; that is to say:—

1. In all suits by creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs at law or next of kin, in which the personal or real, or personal and real estate, for or against or in respect of which, or for an account or administration of which, the demand may be made, shall be under the amount or value of £1000.

2. In all suits for the execution of trusts in which the trust estate or fund shall be under the amount or value of £1000.

3. In all suits for foreclosure or redemption, or for enforcing any charge or lien, in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of £1000.

4. In all suits for specific performance, in which the purchase money or consideration shall be under the amount or value of £1000.

5. In all proceedings under the Trustees' Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of £1000.

6. In all proceedings relating to the guardianship or maintenance of infants, in which the property of the infant shall be under the amount or value of £1000.

7. In all proceedings by special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any railway or private Act of Parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of £1000 (*g*).

(2) Higher scale. 2. In all other cases solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "Higher scale," in the second schedule hereto (*f*), unless the Court shall make other order to the contrary as to all or any of the parties.

(3) Other fees. 3. Solicitors shall also be entitled to charge and be allowed the fees set forth in the third schedule hereto (*h*).

Regulations as to solicitors' fees, subjoined to the Consolidated Orders, and in such other Regulations as may from time to time be made in that behalf by the Lord Chancellor, by and with the advice and assistance of the other Equity Judges, or the greater number of them: Ord. XXXVIII. r. 2.

(*e*) As to higher and lower scales, see Dan. Pr. 1309—1311; and see, as to the County Courts, 28 & 29 Vic. c. 99, ss. 1, 2.

(*f*) See *post*, No. 1552.

(*g*) As to interpleader suits, see Dan. Pr. 1311, n. (*r*).

(*h*) See *post*, No. 1553.

Third Regulation: Court Fees (i).

1547.

1. The fees of Court shall be those set forth in the fourth schedule hereto (*k*). Third Regulation: (1) Reference to schedule.

2. The fees set forth in the column headed "Lower scale," in the fourth schedule hereto (*k*) shall be paid in all cases in which the lower scale of fees is to be charged by and allowed to solicitors, under the provisions of these regulations; and the fees of Court set forth in the column headed "Higher scale," in the fourth schedule hereto (*k*) shall be paid in all other cases. (2) Scale.

3. The solicitor or party instituting any proceeding in respect of which he claims to pay the fees of Court according to the lower scale shall file with the Clerk of Records and Writs a certificate in the form hereunder set forth (*m*): of which certificate the Clerk of Records and Writs shall, at the request of any solicitor or any party acting in person in the suit or matter, mark a copy. (3) Certificate for lower scale.

4. On production of such copy of the certificate, the officers of the Court shall receive and file all proceedings in the suit or matter bearing stamps according to the lower scale. (4) Effect thereof.

5. In any case certified for the lower scale of Court fees in which it shall happen that the solicitor shall become entitled to charge and be allowed according to the higher scale of solicitors' fees, the deficiency in the fees of Court shall be made good. (5) Making good deficiency of Court fees (*n*).

6. In any case in which the fees of Court have been paid upon the higher scale, and in which it shall happen that the solicitor shall become entitled to charge and be allowed only according to the lower scale of solicitors' fees, the excess of fees of Court so paid may be allowed upon the taxation of costs, if the circumstances of the case shall, in the judgment of the Taxing Master, justify such allowance. (6) Allowance of excess of Court fees.

7. The stamps for denoting the payment of fees of Court shall be of the amounts set forth in the fifth schedule hereto (*o*). (7) Denomination of stamps.

(*i*) Regul. to Ord. Sched. 3; see Dan. Pr. 1311; Ord. XXXIX. 2, 3. As to Court fees before 1 Feb. 1857, see Regul. to Ord. XXXIX. r. 1. As to the mode of collecting Court fees by stamps instead of money, see Ord. XXXIX. 4—8; 15 & 16 Vic. c. 87, ss. 6—13. As to vouchers for Court fees, and the allowance of spoiled or useless stamps, see Braithwaite's Pr. 7, 8.

(*k*) See *post*, No. 1554.

(*m*) *Ibid.*, 1548.

(*n*) See Dan. Pr. 1311.

(*o*) See *post*, No. 1555.

1548.

Certificate of the lower scale being applicable (*p*).

In Chancery.

(*Title of the cause or matter, and reference to the record* (*q*)).

I [*Or*, We] hereby certify that, to the best of my [*Or*, our] judgment and belief, the lower scale of fees of Court is applicable to this case. Dated this —— day of ——, 187—.

A. B. (*r*),

Solicitor for the plaintiff [*Or*, defendant —*Or*, petitioner—*Or*, respondent C. D. —*or as may be*].

1549.

Notice of withdrawal of certificate of lower scale (*s*).

In Chancery.

(*Title, &c., as in the certificate.*)

Take notice, that I hereby withdraw, and abandon the use of, the certificate filed by me herein on the —— day of ——, 187—, of the lower scale of Court fees being applicable to this case. Dated (*&c.: Conclude as in* No. 1548, *ante*).

To the Clerk of Records and Writs.

Fourth Regulation: Charges for Copies delivered by Parties and Solicitors (*t*).

1550.

Fourth Regulation:

(1) General rule.

(2) Charges for copies delivered to a person suing or defending *in formâ pauperis*. (*u*).

1. The charges for all copies delivered by parties or solicitors under Ord. XXXVI. 3—5 (*t*), shall be at the rate of fourpence per folio, except in the cases next hereinafter mentioned.

2. The charges for copies of pleadings, and other proceedings and documents delivered under Ord. XXXVI. 3—5 (*t*), to a person admitted to sue or defend *in formâ pauperis*, or to his solicitor, by or on behalf of any other party, shall be at the rate of one penny-halfpenny per folio. Provided always, that if such person shall become entitled to receive dives costs, the charges for such copies shall be at the rate of fourpence per folio; and nothing shall be allowed in taxation in respect of such charges, until such person or his solicitor shall have paid or tendered to the solicitor or party by whom such copies were delivered the additional twopence-

(*p*) See *ante*, No. 1547 (3); Dan. Pr. 1310.

(*q*) When it is intended to limit the operation of the certificate to some interlocutory proceeding: for example, the payment out of Court of a fund standing to a separate account: qualifying words should be added after the title; as thus: "*Ex parte* the account of E. F., an infant," or, "On the petition of E. F.," *&c.*: see Braithwaite's Pr. 6.

(*r*) In the case of a firm of solicitors, one member of it may sign either his own name, or the name of the firm; but, in the former case, he should sign thus: "For self and partners, A. B.": Braithwaite's Pr. 7.

(*s*) See Braithwaite's Pr. 7; Dan. Pr. 1311, n. (*y*).

(*t*) See *ante*, No. 1542.

(*u*) See Dan. Pr. 44.

halfpenny per folio; but this proviso shall not apply to any copy which shall have been delivered by the party himself who is directed to pay the costs, and not by his solicitor.

3. The charges for copies delivered by a person admitted to sue or defend *in formâ pauperis*, other than those delivered by his solicitor, shall be at the rate of one penny-halfpenny per folio. (3) Charges for copies delivered by him(*x*).

4. All office copies and other copies of pleadings, proceedings, and documents in the Court of Chancery shall (except in the case of transcripts of accounts made in the office of the Accountant-General (*z*)), be counted and charged for after the rate of seventy-two words per folio; and where such copies or any portion thereof shall comprise columns containing figures, each figure shall be counted and charged for as one word. (4) Mode of reckoning length of copies (*y*).

First Schedule: Special Examiners' fees and charges (*a*).

1551. First Schedule to the regulations.

	£	*s.*	*d.*
For every day in which he is necessarily, and without any default of his own, detained in the performance of his duty as special examiner, for his expenses the sum of	2	2	0
For every day in which he is *bonâ fide* employed in the examination of witnesses, the further sum of . .	3	3	0
For every mile he travels from his place of residence to the place of examination, and from place to place where the examination is adjourned, and from the place where he last acts in the examination of witnesses, to his place of residence, the sum of . .	0	1	6

Second Schedule: Fees and Charges to be allowed to Solicitors (*b*).

1552. Second Schedule to the regulations: (1) Instructions.

(1) *Instructions* (*dd*).	Lower Scale. (*c*). £	*s.*	*d.*	Higher Scale. (*d*). £	*s.*	*d.*
For claims, original summons in chambers, special cases, answers, examinations, demurrers, pleas, and exceptions . . .	0	13	4	0	13	4
For bills	0	13	4	2	2	0

(*x*) See Dan. Pr. 45.

(*y*) *Ibid.*, 327.

(*z*) See *post*, No. 1554 (9).

(*a*) See *ante*, No. 1545. The cost of hiring a room for the purpose of taking the examination is not included in the special examiner's fees: *Wright* v. *Larmuth*, Law Rep. 10 Eq. 139, V. C. M.

(*b*) See *ante*, No. 1546.

(*c*) *Ibid.*, 1546 (1).

(*d*) *Ibid.*, 1546 (2).

(*dd*) As to bills and answers, examinations, affidavits, and petitions, when

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For amended or supplemental bill . .	0	6	8	0	13	4
For brief on moving for injunction . .	0	13	4	1	1	0
For interrogatories for examination of parties or witnesses	0	6	8	0	13	4
For special petitions	0	6	8	0	13	4
For special affidavits	0	6	8	0	6	8
For brief in a suit by bill, on cause coming on for hearing: to be charged on service of notice of motion for a decree, or on service of *subpœna* to hear judgment (*e*).	1	1	0	1	1	0
For brief on claim: to include all observations	0	10	0	1	0	0
For ditto to move for leave to file . . .	0	2	6	0	10	0
To defend proceedings commenced by bill, claim, special case, petition, or original summons	0	6	8	0	13	4
For instructions for order to revive or add parties	0	6	8	0	13	4

(2) Preparation of documents.

(2) *The Preparation of Pleadings and other Documents* (*f*).

For drawing bills, special cases, answers, pleas, demurrers, exceptions, interrogatories, petitions, and affidavits, per folio .	0	1	0	0	1	0
For engrossing on parchment, per folio . .	0	0	6	0	0	6
For ditto on paper	0	0	4	0	0	4
For drawing statements and other documents for the Judge's or Master's Chambers, when required, including the fair copy thereof to leave in Chambers . .	0	0	8			
For the like drawing when the larger scale is applicable				0	1	0
For fair copy thereof to be left in Chambers				0	0	4

the larger scale is applicable: in lieu of the fixed fees for instructions for and drawing, the Taxing Master is to be at liberty to take into his consideration the special circumstances of each case, and at his discretion to make such allowances for work, labour, and expenses properly performed and incurred in or about the preparation of the bill or answer, examination, affidavit, or petition, as shall appear to him to be just: having regard to the length of the document, the nature of the suit, the interests of the parties, and the fund or person from which or by whom the costs are to be paid: Regul. to Ord. Sched. 2.

(*e*) See *post*, No. 1556, Sched.

(*f*) The Chancery folio to be 72 words, and the sheet 10 folios: Regul. to Ord. Sched. 2. The fee for drawing a document in all cases includes a copy, if required, for the use of the solicitor or client, or for the settlement of counsel: *ib.*

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For drawing all advertisements to be signed by the Master or Judge's clerk, including the attendance thereon	0	6	8	0	13	4
For drawing request to the Accountant-General to lay out cash	0	2	6	0	2	6
For ditto for every carrying over of cash or stock	0	2	6	0	2	6
For drawing caveat against signing or enrolling any decree or order	0	2	6	0	2	6
For drawing special notice of motion	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
For drawing a claim	1	1	0	2	2	0
For ditto at the Master's discretion				3	3	0
For drawing such observations for counsel to accompany brief (except on claims) as may be necessary and proper, per sheet				0	6	8
For drawing the brief on further consideration, per sheet	0	6	8	0	6	8
For preparing and filing replication	0	6	8	0	10	0
For drawing statement on which counsel to move for order to revive or add parties, and copy	0	6	8	0	10	0
Or, according to circumstances, at per sheet				0	6	8
For drawing petition to revive, at per folio	0	1	0	0	1	0
For drawing and copying certificate to appoint guardians *ad litem*	0	6	8	0	6	8
For amending each copy of a bill or claim to serve, where no reprint	0	6	8	0	13	4
For amending each brief bill, or claim, where no reprint	0	6	8	0	13	4
For preparing an original summons for the purpose of proceedings originating in Chambers	0	13	4	1	1	0
For indorsing an original summons, and the copies, under Ord. XXXV. 8 (*g*), and attending to get same sealed	0	6	8	0	6	8
For preparing every other summons, and attending to get same filled up and sealed at Chambers	0	6	8	0	6	8
If special, not to exceed				1	1	0
For drawing bills of costs, including the copy for the Master's office, per folio	0	0	8	0	0	8
For certifying proceeding under lower scale of Court fees	0	5	0			

(*g*) See *ante*, No. 1126.

(3) Perusals.

(3) *Perusals* (*h*).

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For perusing the print of a bill, by the defendant's solicitor (*i*)	1	1	0	1	1	0
If exceeding 60 folios, at per folio				0	0	4
For perusing the print of an amended bill	0	13	4	0	13	4
If amendments exceeding 40 folios, at per folio				0	0	4
For perusing an amended bill, when amended in writing	0	6	8	0	6	8
If amendments exceeding 20 folios, at per folio				0	0	4
For perusing an answer	0	6	8	0	13	4
If exceeding 40 folios, at per folio				0	0	4
For perusing an examination, at per folio	0	0	4	0	0	4
For perusing all special affidavits filed by an opposing party, at per folio	0	0	4	0	0	4
For perusing copy supplemental statement, under 15 & 16 Vict. c. 86, s. 53	0	6	8	0	13	4
For perusing copy order to revive	0	6	8	0	13	4

(4) Copies.

(4) *Copies* (*k*).

Subject to the foregoing regulations as to charges for copies, copies of all documents are to be at the rate of per folio	0	0	4	0	0	4
Or per sheet of 10 folios, at	0	3	4	0	3	4
For examining and correcting a proof, at per folio	0	0	2	0	0	2
For each copy of a Judge's summons, to leave in chambers or to serve	0	2	0	0	2	0
For each copy of a notice of motion, order, or certificate to serve	0	1	0	0	1	0
Or at per folio				0	0	4

(5) Attendances.

(5) *Attendances.*

For attending on a Master's warrant	0	6	8	0	6	8
Or, according to circumstances, not to exceed per diem	2	2	0	2	2	0

(*h*) The fees for perusal are not to apply where the same solicitor is for both parties: Regul. to Ord. Sched. 2.

(*i*) See *post*, No. 1556, Sched.

(*k*) Having regard to the preceding fees for perusal, the fee for "abbreviating" is to cease; and no close copies are now to be allowed as of course; but the allowance is to depend on the propriety of making the copy: which in each case is to be shown and considered: Regul. to Ord. Sched. 2.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For attending each counsel with his brief, case, or abstract, in a suit or other proceeding in this Court	0	6	8	0	6	8
For the like, where the fee amounts to 5 guineas				0	13	4
Where it amounts to 20 guineas				1	1	0
Where it amounts to 40 guineas or upwards				2	2	0
For attending to present special petition, and for same answered	0	6	8	0	6	8
For attending to present petition for order of course, and for order	0	6	8	0	13	4
For attendance on counsel and Court, on motion of course, and for order	0	6	8	0	13	4
For attending on the day in which a cause or petition stands on the paper for hearing	0	6	8	0	10	0
For attending when heard	0	13	4	1	1	0
Or, according to circumstances, not to exceed per diem				2	2	0
For attending the Court on every special motion, each day	0	6	8	0	13	4
The like, when heard	0	13	4	0	13	4
Or, according to circumstances, not to exceed				1	1	0
For attending on motion for, or to discharge, order for injunction, or *ne exeat*, when heard, per diem	0	13	4	1	1	0
Or, according to circumstances, not to exceed				2	2	0
For attending to get answer or special affidavit sworn	0	6	8	0	6	8
For attendance on the Registrar for directions to the Accountant-General to sell or transfer stock	0	6	8	0	6	8
For attendance on the Accountant-General thereon	0	6	8	0	6	8
For attending the Accountant-General with request to lay out cash	0	6	8	0	6	8
The like to carry over cash or stock to another account in his books	0	6	8	0	6	8
For attending Accountant-General to identify a person receiving a check (*l*)	0	6	8	0	6	8
For attending the Accountant-General with order to bespeak, and afterwards to procure his directions for payment of money into Court; attending at the Bank of England to pay the money, and for attend-						

(*l*) See *post*, No. 1562.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
ing on the Accountant-General with the receipt, and at the Report Office to bespeak and to procure the office copy .	0 13 4	0 13 4
Where the sum paid in shall amount to £100	1 1 0	1 1 0
And where the same shall amount to £1,000		2 2 0
And where the same shall amount to £5,000		3 3 0
For attending the Master on signing report	0 6 8	0 6 8
For attending to file report and certificates at the Report Office, and for office copy .	0 6 8	0 6 8
For attending Examiner to procure appointment to examine witnesses . . .	0 6 8	0 6 8
For attending the examination of witnesses before Examiner	0 6 8	0 13 4
Or, according to circumstances, not to exceed per diem	1 1 0	2 2 0
But if without counsel, the fee may, at the Master's discretion, be increased to	2 2 0	3 3 0
For attending to settle, and afterwards to read over the engrossment of an answer or examination (*m*)	0 6 8	0 13 4
If the same exceed 20 folios and under 50 folios	0 13 4	1 1 0
and for each additional 30 folios .	0 6 8	0 6 8
For attending to insert an advertisement in Gazette	0 6 8	0 6 8
For entering caveat with the Clerks of Records and Writs	0 6 8	0 6 8
For attending to procure certificate of a caveat	0 6 8	0 6 8
For attending Registrar to certify abatement or settlement of suit, and to have same so marked in the Cause book .	0 6 8	0 6 8
For attending the printer with a bill or claim to be printed (*n*)	0 6 8	0 6 8
For attending to get copies of bill, claim, or interrogatories, marked for service . .	0 6 8	0 6 8
For attending to take instructions to appear, and to enter the appearance of one or more defendants not exceeding three .	0 6 8	0 6 8
If exceeding three, for every additional number not exceeding three .	0 6 8	0 6 8
For attending at Chambers to get original		

(*m*) See *post*, No. 1556.

(*n*) See *Ibid.*, as to answers.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
summons and duplicate examined and sealed	0	6	8	0	6	8
For attending at the Record and Writ Office to file duplicate and examine copies, and get same stamped	0	6	8	0	6	8
For attending on a summons or other appointment, each day, a fee of 6*s.* 8*d.*, 13*s.* 4*d.*, or £1 1*s.*, according to circumstances: each attendance to be allowed by the Judge or his Chief Clerk (*o*).						
Where from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the above fees an insufficient remuneration for the services performed—or where the preparation of the case or matter, to lay it before the Judge in Chambers or on a summons, shall have required skill and labour for which no fee has been allowed—the Judge may allow such further fee, not exceeding one guinea, or, where the higher scale is applicable, two guineas, as in his discretion he may think fit.	0	6	8	0	6	8
		to			to	
	2	2	0	3	3	0
And where the preparation of the case or matter, to lay it before the Judge in Chambers on a summons, shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor: by a memorandum in writing expressly made for that purpose, and signed by the Judge, specifying distinctly the ground of such allowance: such further fee, not exceeding ten guineas, as in his discretion he may think fit, instead of the above further fee of one guinea or two guineas.						
For perusing the affidavits of claimants coming in under Ord. XXXV. 38 (*p*),						

(*o*) As to separate attendances by same solicitor, see *Brown* v. *Gellatly*, W. N. (1867), 190: 15 W. R. 887, M. R.

(*p*) See Dan. Pr. 1092; but see, as to creditors, *post*, No. 1563.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
and attending in Chambers at the time appointed by the advertisement: where the number of claims do not exceed five	0	10	6	1	1	0
Where the number exceeds five, for every additional number not exceeding five, an additional sum of	0	10	6	1	1	0
For attending for every order drawn up by the Chief Clerk, and at the Registrars' Office to get same entered	0	6	8	0	6	8
For attending to enter claim under Ord. XXXV. 38 (*q*), and to file affidavit	0	6	8	0	6	8
For the plaintiff, or party having the conduct of the order, attending the Registrar with brief and papers to bespeak minutes or order: not being an order of course	0	6	8	0	6	8
For ditto, for preparing list of evidence read (but only when required by the Registrar, and certified by him)	0	6	8	0	6	8
Or according to length, at per folio				0	1	0
Attending to settle the draft or minutes of any decree or order	0	6	8	0	13	4
Or, at the Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Attending to pass any decree or order not being an order of course, including the entry thereof (*r*)	0	6	8	0	13	4
For attending to procure certificate of pleadings	0	6	8	0	6	8
For attending to procure Accountant-General's certificate of fund in Court	0	6	8	0	6	8
For attending to obtain consent of next friend to sue in his name	0	6	8	0	13	4
For attending to give consent to take answer without oath, to hear cause as short, and for other necessary or proper consents of a like nature (*s*)	0	6	8	0	6	8
For attending to procure such consents (*s*)	0	6	8	0	6	8
For procuring certificate of counsel to mark cause short, and attending Registrar thereon	0	6	8	0	6	8

(*q*) See note (*p*) *ante*.

(*r*) The Registrar will leave the order for entry. In case the Registrar shall certify that a special allowance ought to be made in respect of any unusual difficulty in settling and passing an order, the Taxing Master is to consider the same, and make such allowance to all or any of the parties as to him shall seem just: Regul. to Ord. Sched. 2.

(*s*) The fees for consent are not to apply where the same solicitor is for both parties: Regul. to Ord. Sched. 2.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For attendance to mark Master, or conveyancing counsel	0	6	8	0	6	8
For attendances in consultation or in conference with counsel	0	13	4	0	13	4
For attending to set down cause or appeal for hearing	0	6	8	0	6	8
For attending to leave papers with Judge's secretary prior to hearing	0	6	8	0	6	8
For attending Court on appointment of a guardian *ad litem*	0	13	4	0	13	4
For attending to procure transcripts of Accountant-General's books, when necessary	0	6	8	0	6	8

(6) *Writs.* (6) Writs.

For every writ of *subpœna duces tecum*	0	6	8	0	6	8
For a writ or writs of *subpœna* other than *subpœna duces tecum*, if the number of names therein shall not exceed three	0	6	8	0	6	8
If exceeding three names, for every additional number not exceeding three	0	6	8	0	6	8
For instructions for every writ of *fieri facias de bonis ecclesiasticis*, or writ of *sequestrari facias*	0	6	8	0	6	8
For preparing every writ of *fieri facias de bonis ecclesiasticis*, or writ of *sequestrari facias*	0	13	4	0	13	4
For attending to lodge any writ of *fieri facias de bonis ecclesiasticis* or writ of *sequestrari facias* at the Bishop's registry, and for attending to instruct the officer charged with the execution of such writ	0	6	8	0	6	8
For preparing every other writ without order	0	6	8	0	6	8
For every writ under order, except special injunction	0	13	4	0	13	4
For special injunction, including ingrossment and docket	0	10	0	1	0	0
Or per folio	0	1	4	0	1	4
For inrolling a decree or order	0	10	0	1	0	0
Or per folio	0	1	4	0	1	4

(7) *Notices and Services* (*t*). (7) Notices and services.

For service of a notice of motion, exclusive of copy	0	2	6	0	2	6

(*t*) The fees for notices and services are not to apply where the same solicitor is for both parties, unless it be necessary for the purpose of making affidavit

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For notice to a solicitor of appearance, answer, demurrer, plea, amendment, and replication	0	2	6	0	2	6
For notice of claim, under 36th order of 16th October, 1852	0	2	6	0	2	6
For notice of evidence to be read in Judge's Chambers	0	2	6	0	2	6
For notice of filing affidavit or set of affidavits filed, or which ought properly to have been filed together, to be read in Court	0	2	6	0	2	6
For notice of appointment for settling and passing minutes, decrees, or orders before the Registrar	0	2	6	0	2	6
For copy and service of a warrant on a solicitor	0	2	6	0	2	6
For service of a Judge's summons, exclusive of the copy	0	2	6	0	2	6
For service of a petition	0	2	6	0	2	6
For service of an order, exclusive of the copy	0	2	6	0	2	6
For other necessary or proper notice (*u*)	0	2	6	0	2	6
For services on a party or witness: such reasonable charges and expenses as may be properly incurred, according to distance or by the employment of an agent.						

(8) Oaths and exhibits.

(8) *Oaths and Exhibits.*

To the Commissioner, for oath in London, according to statute (*x*)	0	1	6	0	1	6
In the country	0	2	6	0	2	6
To the solicitor, for preparing each exhibit in town and country	0	1	0	0	1	0
The Commissioner, for marking each exhibit	0	1	0	0	1	0

(9) Term fee.

(9) *Term Fee.*

For a term fee in all causes, for every term in which a proceeding by the party shall take place	0	10	0	0	10	0
And for letters per term	0	5	0	0	5	0

of service. There is to be one notice only of settling minutes, and one notice of passing decree or order: which if necessary are to be continued by adjournment, of which all parties are to take notice: Regul. to Ord. Sched. 2; and see *post*, No. 1562.

(*u*) See *post*, No. 1562.

(*x*) 16 & 17 Vic. c. 78, s. 2: *ante*, No. 40, n. (*t*).

	Lower Scale.	Higher Scale. £ s. d.
In country agency causes, the further fee for letters of		0 6 8
And if it be shown to the satisfaction of the Taxing Master that the agency correspondence has been special and extensive, he is to be at liberty to make a special allowance in respect thereof.		
In addition to the term fee, the necessary expense of the postage, carriage, and transmission of documents is to be allowed.		
The like term fee, and for letters, in matters as in causes.		
Where no proceeding is taken which carries a term fee, a charge for letters may be allowed, if the circumstances shall require it.		

For any work or labour properly performed and not herein provided for, such allowances are to be made as heretofore.

Third Schedule: Other fees to be allowed to Solicitors (*y*).

1553.

For perusing abstract: every three brief sheets . .	0	6	8	Third Schedule to the regulations.
For perusing the draft of every deed: for each skin .	0	5	0	
For examining the ingrossment with the draft: for every three skins	0	10	0	
For making all attested copies, examining and attesting same: per folio	0	0	6	

Fourth Schedule: Fees to be collected by means of Stamps (*z*).

1554.

(1) *In the Judges' Chambers.*	Lower Scale. (*a*). £ s. d.	Higher Scale. (*a*). £ s. d.
For every original summons for the purpose of proceedings originating in Chambers .	0 5 0	0 5 0
For every duplicate thereof . . .	0 1 0	0 5 0
For every other summons	0 1 0	0 3 0

Fourth Schedule to the regulations: (1) Judges' Chambers.

(*y*) See *ante*, No. 1546 (3).
(*z*) *Ibid.*, 1547.
(*a*) *Ibid.*, 1547 (2).

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For every order drawn up by the Chief Clerk, made upon applications for time to plead, answer, or demur, for leave to amend bills or claims, or for enlarging publication, or the period for closing evidence	0	1	0	0	5	0
For every other order drawn up by the Chief Clerk	0	10	0	1	0	0
For every advertisement				1	0	0
For every certificate or report	1	0	0	1	0	0
For every certificate upon the passing of a receiver's or consignee's account, a further fee in respect of each £100 of the net balance received by such receiver or consignee, after deducting all necessary outgoings for rents, taxes, rates, repairs, and management of the property	0	10	0	0	10	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6	0	1	6

(2) Masters' Offices.

(2) *In the Masters' Offices* (*b*).

For every warrant or summons	0	3	0	0	3	0
For every certificate or report	1	0	0	1	0	0
For taking the acknowledgment of every married woman	1	6	8	1	6	8
For attending any Court per day by the clerk	0	14	0	0	14	0
For every certificate upon the passing of a receiver or consignee's account, a further fee in respect of each £100 of the net balance received by such receiver or consignee, after deducting all necessary outgoings for rents, taxes, rates, repairs, and management of the property	0	10	0	0	10	0

(3) Registrars' Office.

(3) *In the Registrars' Office.*

For every decree or decretal order made by the Court on a special case, or on the original hearing of a cause or claim, or on motion for a decree, and on further directions, or further consideration not made on summons adjourned from Chambers	1	0	0	3	0	0

(*b*) The Masters in Ordinary are now abolished: see Dan. Pr. 1039.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For every order on petition or motion of course	0	1	0	0	5	0
For every other order (*c*)	0	10	0	1	0	0
For every office copy of a decree or order, and for every office copy of a petition of appeal or re-hearing made under Ord. XXXVI. 12 (*d*)	0	10	0	1	0	0

(4) *In the Examiners' Office.* (4) Examiners' Office.

For every witness sworn and examined, including oath, for each hour	0	5	0	0	5	0
For every witness sworn and examined away from the office (besides coach hire and reasonable expenses)	1	7	0	1	7	0
If more than five miles from the Examiner's Office, for the first day	2	15	0	2	15	0
For every other day	2	2	0	2	2	0
Upon every application to inspect depositions, including the inspection	0	3	0	0	3	0
Upon every application to search book for causes, including search	0	1	0	0	1	0
Upon every application to search book for depositions, including search	0	1	0	0	1	0

(5) *In the Record and Writ Clerks' Office, and Report Office.* (5) Record and Writ Clerks', and Report Offices.

For making all office and other copies, per folio	0	0	4	0	0	4
For filing every bill or information	0	10	0	1	0	0
For filing every claim	0	5	0	0	5	0
For filing every special case	1	0	0	1	0	0
Upon entering every appearance, if not more than three defendants	0	7	0	0	7	0
If more than three and not exceeding six defendants	0	14	0	0	14	0
And the same proportion for every like number of defendants.						
For every certificate	0	4	0	0	4	0
For marking every copy of a bill, claim, or summons to be served	0	1	0	0	5	0
For every writ of summons, *distringas*, *subpœna*, or attachment	0	5	0	0	5	0

(*c*) The above fees are to include the charge for entry: Regul. to Ord. Sched. 4.

(*d*) See Dan. Pr. 1362; and *ante*, No. 1544, n. (*a*).

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For every writ of *fieri facias de bonis ecclesiasticis*, or *sequestrari facias* . . .	1	0	0	1	0	0
For sealing every other writ . . .	1	0	0	1	0	0
For every oath, affirmation, declaration, or attestation upon honour: except for the purpose of receipt of dividends from the Accountant-General	0	1	6	0	1	6
For examining every copy or part of a copy of a set of interrogatories, and marking same as an office copy . .	0	1	0	0	5	0
Upon every application for a search for a record, and for searching (*e*) . . .	0	2	0	0	2	0
Upon every application for a search in the Report Office	0	0	6	0	0	6
Upon every application to inspect a record, and for inspecting the same (*e*) . . .	0	5	0	0	5	0
Upon every application to inspect exhibits, if occupied not more than one hour .	0	5	0	0	5	0
If more than one hour, *per diem* . .	0	10	0	0	10	0
Upon every application for the officer's attendance in courts of law, *per diem*, and for his attendance, besides reasonable expenses of the officer (*f*)	1	0	0	1	0	0
Upon every application for the officer's attendance in a Court of equity, and for his attendance, *per diem* (*f*) . . .	0	10	0	0	10	0
Upon every application to swear an invalid, including the attendance, besides necessary expenses (*g*)	0	10	0	0	10	0
For examining and signing inrolments of decrees and orders	3	0	0	3	0	0
For filing caveat against claim to revive, or against decree or order or inrolment .	0	5	0	0	5	0
For filing supplemental statement, or statement for revivor	0	5	0	0	10	0
For filing every affidavit: including schedules and exhibits	0	2	6	0	2	6
For every application to inspect an affidavit (*h*)	0	0	6	0	0	6
For amending every record of a bill, claim, or special case	0	10	0	0	10	0

(*e*) See *ante*, No. 1538, n. (*h*).
(*f*) *Ibid.*, 738—742, 1540, and notes thereto.
(*g*) *Ibid.*, 1541, n. (*n*).
(*h*) *Ibid.*, 1537, n. (*g*).

(6) *In the Taxing Masters' Office.* (6) Taxing Masters' Office.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
For every warrant or summons; but not more than one warrant or summons is to be issued on one bill, or set of bills, unless the Taxing Master shall think it necessary to issue a new warrant or summons.	0 1 0	0 3 0
On signing every report and certificate .	0 10 0	1 0 0
Upon the taxation of every bill of costs, as taxed, where the amount shall not exceed £20 (*i*)	0 10 0	0 10 0
Upon every additional £20, or fractional part thereof, a further fee of (*i*)	0 10 0	0 10 0
For every oath, affirmation, or attestation upon honour	0 1 6	0 1 6

(7) *In the Lord Chancellor's Principal Secretary's Office.* (7) Lord Chancellor's Principal Secretary's Office.

On all attendable petitions, appeals, rehearings, and letters missive . .	0 5 0	1 0 0
On all non-attendable petitions . . .	0 5 0	0 10 0
On a matter of course order, on a petition of right	0 10 0	0 10 0
On an order for a commission on a petition of right	1 0 0	1 0 0

(8) *In the Office of the Secretary at the Rolls.* (8) Office of Secretary at the Rolls.

On every petition set down for hearing: to include the fee on hearing . .	0 5 0	1 0 0
On the petition for every order of course .	0 1 0	0 5 0
On the admission of every solicitor . .		1 17 0

(*i*) Where no certificate of the taxation of a bill of costs is required, the *ad valorem* duty hereby directed to be levied in respect of the taxation of costs shall nevertheless be due, and shall be payable on the amount of the bill as taxed, or on the amount of such part thereof as may have been taxed; and the solicitor shall in such case cause the proper stamp (the amount thereof to be fixed by the Taxing Master) to be impressed on or annexed to the bill of costs. But where the Taxing Master sends a bill or part of a bill to the officer of any other Court, with a request to such officer to assist him in the taxation thereof, and the officer of such other Court takes his fee thereon, the *ad valorem* duty hereby directed to be levied in respect of the taxation of costs shall not be paid on that part of the bill so taxed and charged for by the officer of such other Court: Regul. to Ord. Sched. 4.

(9) Accountant-General's Office.

(9) *In the Office of the Accountant-General.*

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For preparing power of attorney with affidavit, exclusive of stamp duty . .	0	3	0	0	3	0
Upon every application for a search . .	0	5	0	0	5	0
For transcript of accounts, each opening: consisting of debtor and creditor sides of the account	0	2	0	0	2	0

Fifth Schedule: Amounts of stamps for collecting fees (k).

1555.

Fifth Schedule to the regulations.

One penny, threepence, fourpence, sixpence, eightpence, one shilling, one shilling and fourpence, one shilling and sixpence, one shilling and eightpence, two shillings, two shillings and sixpence, two shillings and eightpence, three shillings, three shillings and sixpence, four shillings, five shillings, seven shillings, eight shillings, ten shillings, fourteen shillings, one pound, two pounds, three pounds, four pounds, five pounds, ten pounds.

SECTION IV.—REGULATIONS AS TO EXAMINERS' FEES AND CHARGES, SOLICITORS' FEES AND CHARGES, COURT FEES, AND CHARGES FOR COPIES: CONTAINED IN GENERAL ORDERS SUBSEQUENT TO THE CONSOLIDATED ORDERS.

1556.

(1) *Order of 6th March*, 1860: *Printing Answers* (*l*).

Ord. 6 Mar. 1860:

(6) Office copy answer.

6. On receiving from the plaintiff a demand for an official and certified printed copy of the answer, the defendant is to get a printed copy thereof examined by the Clerks of Records and Writs with the answer as filed, and to stamp such copy with a Chancery stamp for 5*s.*; and the Clerks of Records and Writs, on finding that such copy is duly stamped and correct, are to certify thereon that the same is a correct copy, and to mark the same as an office copy.

(7) Delivery thereof to plaintiff.

7. Such copy is, on demand, to be delivered to the plaintiff, who, on receipt thereof, is to pay to the defendant the amount of the stamp thereon, and at the rate of 4*d.* per folio for the same.

(8) Delivery of further copies, on demand.

8. The plaintiff is also to be entitled to demand and receive from the defendant any additional number of printed copies of his

(*k*) See *ante*, No. 1547 (7).

(*l*) Ord. 6 March, 1860, rr. 6—9, 14; see Dan. Pr. 659—661; and *ante*, Nos. 600—605, and notes thereto.

answer, not exceeding ten, on payment for the same at the rate of one halfpenny per folio.

9. After all the defendants who are required to answer shall have filed their answers, a co-defendant is to be entitled to demand and receive from any other defendant any number of printed copies of his answer, not exceeding six, on payment for the same at the rate of one halfpenny per folio (*m*). (9) Answers of co-defendants.

14. Solicitors are to be entitled to charge the fees mentioned in the schedule hereto. (14) Solicitors' fees.

The Schedule.

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
For instructions for brief in a suit by bill on cause coming on for hearing: to be charged on service of notice of motion for a decree, or on service of *subpœna* to hear judgment (*n*)	1	1	0	2	2	0
The solicitor of the party answering interrogatories: for perusing the interrogatories (*o*)	0	6	8	0	13	4
If exceeding 40 folios, at per folio (*o*)	0	0	0	0	0	4
The solicitor of the party filing an answer: for his attendances on the Record and Writ Clerks, with and for the written and printed copies of the answer, and for certifying (*p*)	0	6	8	0	13	4
For examining and correcting the proof, at per folio (*p*)	0	0	2	0	0	2
For attending the printer with the answer to be printed (*p*)	0	6	8	0	6	8
For revising the print before swearing, or filing, at per folio (*p*)	0	0	2	0	0	2

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(2) *Order of 20th March*, 1860: *Judicial opinions, under* 22 *&* 23 *Vic. c.* 35 (*q*).

1557.
Ord. 20 Mar. 1860:

5. The fees of Court, and the fees and allowances to solicitors, on proceedings under the 30th section of the said Act, shall be the same as are now payable under Ord. XXXVIII., XXXIX. (*r*), and by the practice of the Court, for business of a similar nature. (5) Court fees, and fees to solicitors.

(*m*) See Dan. Pr. 660.
(*n*) See *ante*, No. 1552 (1).
(*o*) *Ibid.*, 1552 (3).
(*p*) *Ibid.*, 1552 (5).
(*q*) Ord. 20 March, 1860, r. 5; see Dan. Pr. Chap. XLV.; and *post*, Chap. XLV.
(*r*) See *ante*, Nos. 1546, 1547.

1558.

Ord. 5 Feb. 1861:

(3) *Order of 5th February*, 1861 : *Mode of taking Evidence* (*s*).

(13) Expenses of examiner.

13. The Examiner shall, in respect of expenses incident to the performance of his duty under such order as mentioned in the last preceding rule (*t*), be entitled to receive, on the production to him of such order, such sums of money as are mentioned in the schedule hereto. Such sums shall be paid to him by the party obtaining such order ; and, subject to any direction of the Court, or of the Judge in Chambers to the contrary, shall be costs in the cause.

The Schedule.

	£	*s.*	*d.*
For every day in which he is necessarily, and without any default of his own, detained in the performance of such duty, for his expenses, the sum of . .	1	1	0
For every mile he travels from the Examiners' office to the place of examination, and from one of the places of examination or cross-examination (if more than one) to another of them, and from the place where he last acts in such examination or cross-examination to the Examiners' office, the sum of . . .	0	1	6

1559.

Ord. 1 Jan. 1862:

(4) *Order of 1st January*, 1862 : *Deposit on Oral Examinations before Examiner* (*u*).

Deposit to be paid on obtaining an appointment before the examiner.

Every party in a cause or matter who is desirous of having an oral examination of a witness or witnesses before one of the Examiners of the Court shall, at the time when he obtains an appointment for the purpose of having such examination taken, deposit with the clerk of the Examiner the sum of three pounds ; and in case such party shall fail to attend and duly proceed with the examination of his witness or witnesses at the time appointed for the examination, unless prevented by death, illness, or unavoidable accident, the Examiner shall direct the sum so deposited to be paid to the opposite party attending such appointment ; and where the appointment shall have been duly attended, or where the examination cannot be proceeded with in consequence of death, illness, or unavoidable accident, the sum so deposited shall be returned to the party who deposited the same ; but in those cases where there is no opposite party, or the opposite party shall fail to attend such appointment, then the respective clerks of the Examiners shall once in every six months pay into the Bank of England, into the name of the Accountant-General of this Court,

(*s*) Ord. 5 Feb. 1861, r. 13 ; see Dan. Pr. 806, n. (*c*) ; and *ante*, No. 826.

(*t*) Ord. 5 Feb. 1861, r. 12 ; Dan. Pr. 806.

(*u*) Ord. 1 Jan. 1862 ; see Dan. Pr. 806, n. (*c*). This order came into operation on the 1st Feb. 1862 : *ib.*

to the credit of the Suitors' Fee Fund Account, the sum so deposited and remaining in the hands of such clerks respectively, in consequence of the appointments not having been duly attended: the amount of the sums so deposited, and paid by such clerks as aforesaid, to be verified by affidavit.

1560.

(5) *Order of 1st February*, 1862: *Petitions of Right, under* 23 & 24 *Vic. c.* 34 (*x*).

Ord. 1 Feb. 1862:

8. The fees and allowances payable to all officers and solicitors of this Court, in respect of matters under the said Act, shall be such fees and allowances as, by the practice of the Court and the General Orders from time to time in force, they are entitled to take and charge for similar proceedings in cases between subject and subject.

(8) Fees of Court, and to solicitors.

1561.

(6) *Order of 16th May*, 1862: *Printing Evidence* (*y*).

Ord. 16 May, 1862:

6. Every party who files an affidavit, or causes depositions to be taken, is to take from the Clerks of Records and Writs a printed copy of every affidavit filed by him, and of all such depositions: for which he is to pay in stamps at the rate of twopence per folio; and unless such copy is taken, he is not to be allowed anything in the taxation of costs in respect of such affidavit or depositions.

(6) Payment for copies.

7. All parties are to be at liberty to take from the Clerks of Records and Writs as many other printed copies of their own and of their opponents' affidavits and depositions as they may require, on paying for the same in stamps at the rate of one penny per folio.

(7) Number of copies.

8. Solicitors are to be allowed, on the taxation of costs, the same fees for printed copies of the affidavits and depositions used for the briefs of counsel as solicitors are now allowed for written copies; and in country agency causes they are also to be allowed at the rate of fourpence per folio for one other printed copy of the affidavits and depositions of the opposite party; but for all other printed copies which may be necessarily used in the progress of the cause solicitors are to be allowed only the sums actually paid for the same.

(8) Solicitors' fees.

9. Affidavits and depositions which shall have been filed for the purpose of any interlocutory application, and of which office copies shall have been taken for that purpose, are excepted from the operation of this Order (*z*).

(9) Exceptions.

(*x*) Ord. 1 Feb. 1862, r. 8; see Dan. Pr. 123; and *ante*, Nos. 144—153.

(*y*) Ord. 16 May, 1862, rr. 6—9; see Dan. Pr. 797—799; and *ante*, Nos. 796—798.

(*z*) See *ante*, No. 1536 (9).

1562.
Ord. 11 Nov. 1862:

(7) *Order of 11th November, 1862: under the Companies Act, 1862 (a).*

(70) Fees and charges to be allowed to solicitors.

70. Solicitors shall be entitled to charge, and be allowed, the fees set forth and referred to in the first schedule hereto, unless the Court or Judge shall otherwise specially direct.

(71) Fees of Court.

71. The fees of Court set forth and referred to in the second schedule hereto shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders.

(72) Taxation of costs.

72. Where an order is made in Court or Chambers for payment of any costs, the order shall direct the taxation thereof by the Taxing Master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders.

The first Schedule.

Fees and Charges to be allowed to Solicitors.

	£	s.	d.
For preparing and drawing up every order made at Chambers, and attending for same, and at the Registrars' Office to get same entered	0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4

For other duties performed, such of the fees on the higher scale authorised by the 2nd rule of the 38th of the Consolidated General Orders (*b*), and the regulations as to solicitors' fees subjoined thereto (*c*), as are applicable; except that the special fee allowed on creditors' claims is not to apply.

Where under such Regulations a fee of three guineas may be allowed for attending any summons or other appointment at the Judge's Chambers, the same may be increased to any sum not exceeding five guineas.

The fee of 2*s.* 6*d.* allowed by such Regulations for notices and services, shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by rule 63 of the Ord. of 11 Nov. 1862.

The usual charges relating to printing shall be allowed, in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than £3.

(*a*) 25 & 26 Vic. c. 89; Ord. 11 Nov. 1862, rr. 70—72.
(*b*) See *ante*, No. 1546, n. (*d*).
(*c*) *Ibid.*, 1546, 1550, 1552.

The second Schedule.

Fees to be collected by means of Stamps.

	£	s.	d.
(1) *In the Judges' Chambers.*			
For every summons	0	3	0
For every order drawn up by the Chief Clerk	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6
(2) *In the Registrars' Office.*			
For every order made in Court	1	0	0
For every order made in Chambers	0	5	0
For every office copy of an order	0	5	0

(3) *In the Examiners' Office.*

The same fees as those directed to be paid and collected in such Office by the 2nd Rule of the 39th of the Consolidated General Orders (*d*), and the Regulations subjoined thereto (*e*).

(4) *In the Record and Writ Clerks' Office, and Report Office.*

Such of the fees directed to be paid and collected in such Office by the 2nd Rule of the 39th of the Consolidated General Orders (*d*), and the Regulations subjoined thereto (*f*), as are applicable.

(5) *In the Taxing Masters' Office.*

The same fees as those directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated General Orders (*d*), and the Regulations subjoined thereto (*g*).

(6) *In the Office of the Lord Chancellor's Principal Secretary.*			
For every petition	1	0	0
(7) *In the Office of the Secretary at the Rolls.*			
For every petition	1	0	0

(*d*) See *ante*, No. 1546, n. (*d*).
(*e*) *Ibid.*, 1547, 1554 (4).
(*f*) *Ibid.*, 1547, 1554 (5).
(*g*) *Ibid.*, 1547, 1554 (6).

1563.

Ord. 27 May, 1865:

(14) Fees and charges to be allowed to solicitors.

(8) *Order of 27th May*, 1865: *Proving Claims* (*h*).

14. Solicitors shall be entitled to charge and be allowed the fees set forth and referred to in the first schedule to this Order, for business done under this order.

The first Schedule.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For every notice which may be sent by the post, including the sending . . .	0	2	6	0	2	6
For every other notice, including the service	0	5	0	0	5	0
For attendances on the Accountant-General to bespeak all cheques for sums payable to creditors under any decree or order .	0	6	8	0	13	4
For all other attendances on the Accountant-General and Registrar to produce papers necessary to enable all creditors to receive their cheques under any decree or order, and get them passed	0	6	8	0	13	4
And if the number of such cheques exceeds two, for every additional number not exceeding two . .	0	6	8	0	6	8
Except that the last-mentioned fees shall not in any case (unless the Taxing Master shall in his discretion think fit, under special circumstances, to allow a larger amount) exceed	3	3	0	5	5	0
For all other business, the same fees and allowances as are authorised by Ord. XXXVIII. 2 (*i*), and the regulations as to solicitors' fees subjoined thereto (*k*), and by the practice of the Court, for business of a similar nature; except the special fees applicable to creditors (*l*) coming in under the rules of Ord. XXXV. which are abrogated by this order (*m*).						

(*h*) Ord. 27 May, 1865, r. 14.

(*i*) See *ante*, No. 1546, n. (*d*).

(*k*) *Ibid.*, 1546, 1550, 1552.

(*l*) *Ibid.*, 1552 (5).

(*m*) That is, rules 37, 38, 41, 42, and 43 of Ord. XXXV., in so far only as the same relate to creditors: see Ord. 27 May, 1865, r. 11.

1564.
Ord. 24 Jan. 1868:

(9) *Order of 24th January*, 1868: *Proceedings under the Railway Companies Act*, 1867 (*n*).

36. Solicitors shall be entitled to charge and be allowed the fees set forth or referred to in the first schedule hereto, unless the Court or Judge shall otherwise specially direct.

(36) Fees and charges to be allowed to solicitors.

37. The fees of Court set forth and referred to in the second schedule hereto shall be paid in relation to proceedings in Chancery under the said Act, and shall be collected by means of stamps in manner provided by the General Orders of the Court.

(37) Fees of Court.

The first Schedule.

Fees and charges to be allowed to Solicitors.

For all duties performed under the Railway Companies Act, 1867, such of the fees on the higher scale authorised by the 2nd rule of the 38th of the Consolidated Orders (*o*), and the Regulations as to solicitors' fees subjoined thereto (*p*), as are applicable: unless the Court or Judge shall otherwise specially direct.

The second Schedule.

Fees to be collected by means of stamps.

(1) *In the Judges' Chambers.*

Such of the fees as are directed to be paid and collected by the 2nd rule of the 39th of the Consolidated Orders (*o*), and the Regulations subjoined thereto (*q*), as are applicable.

(2) *In the Registrars' Office.*

Such of the fees as are directed to be paid and collected by the 2nd rule of the 39th of the Consolidated Orders (*o*), and the Regulations subjoined thereto (*r*), as are applicable.

(*n*) 30 & 31 Vic. c. 127; Ord. 24 Jan. 1868, rr. 36, 37.
(*o*) See *ante*, No. 1546, n. (*d*).
(*p*) *Ibid.*, 1546, 1550, 1552.
(*q*) *Ibid.*, 1547, 1554 (1).
(*r*) *Ibid.*, 1547, 1554 (3).

(3) *In the Record and Writ Clerks' Office.*

	£	s.	d.
For filing every scheme of arrangement . . .	1	0	0
For every certificate of filing a scheme of arrangement	0	5	0

Such other fees as are directed to be paid and collected by the 2nd rule of the 39th of the Consolidated Orders (*s*), and the Regulations subjoined thereto (*t*), as are applicable.

(4) *In the Examiners' Office.*

Such of the fees as are directed to be paid and collected by the 2nd rule of the 39th of the Consolidated Orders (*s*), and the Regulations subjoined thereto (*u*), as are applicable.

(5) *In the Taxing Masters' Office.*

Such of the fees as are directed to be paid and collected by the 2nd rule of the 39th of the Consolidated Orders (*s*), and the Regulations subjoined thereto (*x*), as are applicable.

(6) *In the Office of the Lord Chancellor's Principal Secretary.*

	£	s.	d.
For every petition	1	0	0

(7) *In the Office of the Secretary at the Rolls.*

	£	s.	d.
For every petition	1	0	0

1565.

Ord. 21 Mar. 1868.

(10) *Order of* 21*st March*, 1868 : *under the Companies Act*, 1867 (*z*).

(21) Fees and charges to be allowed to solicitors.

21. Solicitors shall be entitled to charge and be allowed for duties performed under "The Companies' Act, 1867," the same fees as they shall for the time being be entitled to charge and be allowed for the like duties performed under "The Companies' Act, 1862" (*a*): unless the Court or Judge shall otherwise specially direct.

(*s*) See *ante*, No. 1546, n. (*d*).
(*t*) *Ibid.*, 1547, 1554 (5).
(*u*) *Ibid.*, 1547, 1554 (4).
(*x*) *Ibid.*, 1547, 1554 (6).
(*z*) 30 & 31 Vic. c. 131; Ord. 21 Mar. 1868, rr. 21, 22; amended y Ord. 2 Mar. 1869.
(*a*) See *ante*, No. 1562, and Sched. 1.

22. The same fees of Court shall be paid in relation to proceedings in Chancery under "The Companies' Act, 1867," as shall for the time being be payable in relation to like proceedings in Chancery under "The Companies' Act, 1862" (*b*), and shall be collected by stamps in manner provided by the General Orders of the Court. (22) Fees of Court.

1566.

(11) *Order of 29th April*, 1869 : *under The Liquidation Act*, 1868 (*c*). Ord. 29 April, 1869:

23. Solicitors shall be entitled to charge and be allowed for all duties performed under The Liquidation Act, 1868, such of the fees on the higher scale, authorised by the 2nd rule of the 38th of the Consolidated Orders (*d*), and the Regulations as to solicitors' fees subjoined thereto (*e*), as are applicable : unless the Court or Judge shall otherwise specially direct. (23) Fees and charges to be allowed to solicitors.

24. The fees of Court set forth or referred to in the schedule hereto shall be paid in relation to proceedings in Chancery under the said Act, and shall be collected by means of stamps, in manner provided by the General Orders of the Court. (24) Court fees.

The Schedule.

Fees to be collected by means of Stamps.

In the Judges' Chambers, and in the respective Offices of the Registrars, the Examiners, and the Taxing Masters, such of the fees by the 2nd rule of the 39th of the Consolidated Orders (*d*), and the Regulations subjoined thereto (*g*), directed to be collected and paid, as are applicable.

In the Record and Writ Clerks' Office.

	£	*s.*	*d.*
For filing every scheme under The Liquidation Act, 1868	1	0	0
For every certificate of filing a scheme	0	5	0
And such other fees by the 2nd rule of the 39th of the Consolidated Orders (*d*), and the Regulations subjoined thereto (*h*), directed to be paid and collected, as are applicable.			

(*b*) See *ante*, No. 1562, and Sched. 2.
(*c*) 31 & 32 Vic. c. 68 ; Ord. 29 April, 1869, rr. 23, 24.
(*d*) See *ante*, No. 1546, n. (*d*).
(*e*) *Ibid.*, 1546, 1550, 1552.
(*g*) *Ibid.*, 1547, 1554 (1, 3, 4, 6).
(*h*) *Ibid.*, 1547, 1554 (5).

In the Office of the Lord Chancellor's Principal Secretary.

	£	s.	d.
For every petition	1	0	0

In the Office of the Secretary at the Rolls.

For every petition	1	0	0

1567.
Ord. 7 Jan. 1870:

(12) *Order of 7th January*, 1870: *under The Debtors Act*, 1869 (*i*).

(19) General practice of the Court to apply.

19. The general practice of the Court shall, in all cases not provided for by "The Debtor's Act, 1869," or these rules, and so far as the same is applicable, and not inconsistent with the said Act or these rules, apply to all proceedings under the 4th and 5th sections of the said Act.

(20) Charges to be allowed to solicitors; and fees of Court.

20. The charges to be allowed to solicitors for duties performed in respect of such proceedings as last aforesaid, and the fees of Court in respect of the same proceedings, shall be the same as those allowable and payable in respect of other proceedings of the same nature, in the causes or matters in which such proceedings respectively are taken.

1568.
Ord. 17 Jan. 1870 (*k*).

(13) *Order of 17th January*, 1870: *Fees of Taxation, when costs payable out of a fund in Court.*

(1) Abrogation of Cons. Ord. XXXIX. 8, and Gen. Ord. 25 Oct. 1852, r. 8.

1. Rule 8 of the 39th of the Consolidated General Orders, and the 8th of the General Orders of the 25th day of October, 1852, are hereby abrogated; and the following Rules shall be deemed to be incorporated with the said Consolidated Orders, in the place of the said Rule, and shall be read as part of such Orders, and the interpretation clause in such Orders contained shall apply to these Rules.

(2) Amount of fees of taxation to be certified by Taxing Master.

2. Where costs are directed to be paid out of a fund in Court, the fees of taxation shall not be payable by means of stamps, but shall be carried over and transferred in manner hereinafter provided; and to that intent the Taxing Master shall in such cases certify the amount of such fees.

(3) Amount to be carried over by Accountant-

3. In each of the divisions of the Accountant-General's Office, an account shall from henceforth be kept, intituled "The Paymaster-General's Fees of Taxation Account;" and when any such Certificate as is mentioned in the preceding Rule is left at the

(*i*) 32 & 33 Vic. c. 62; Ord. 7 Jan. 1870, rr. 19, 20.
(*k*) See Dan. Pr. 1315, n. (*e*).

Office of the Accountant-General, to be acted on, the amount of fees certified thereby shall be carried over from the fund out of which the costs are directed to be paid to the last-mentioned account in that division of the Accountant-General's Office in which the account, to the credit of which such fund shall be standing, is kept.

General to credit of Paymaster-General's fees of taxation account;

4. As soon as conveniently may be after the 31st day of January, the 30th day of April, the 31st day of July, and the 31st day of October in each year, upon receiving from the Paymaster-General's Office a direction to the Governor and Company of the Bank of England to credit the account in their books of Her Majesty's Paymaster-General, "Cash Account," with the amount of cash standing on those days respectively on the credit of the said account in each of the divisions of the Accountant-General's Office, entitled "The Paymaster-General's Fees of Taxation Account," the Accountant-General shall, by certificate under his hand, direct the Governor and Company of the said Bank to transfer from his account the amount so expressed in such direction to such Cash Account of the Paymaster-General accordingly, and such certificate of the Accountant-General shall be a good and sufficient authority to the said Bank to write off the amount therein mentioned from the account of the Accountant-General, and to place it to the account of the Paymaster-General, "Cash Account" as aforesaid, without any further Order of this Court; and upon receiving from the said Bank a certificate that such transfer from the account of the Accountant-General to the account of the Paymaster-General has been effected, the Accountant-General is to cause the amount so transferred to be placed to the debit of the proper account in his books.

(4) And to be paid quarterly, by transfer to the Paymaster-General's cash account.

5. This Order shall come into operation on the 21st day of January, 1870, and Rule 2 shall be deemed to take effect as from the first day of October last; except as regards such Fees of Taxation (if any) as may have been paid by means of stamps since that day.

(5) Commencement of order.

Section V.—Receiver's costs of his appointment.—And costs of passing his accounts.

1569.

Receiver's costs of appointment and passing account (*l*).

1. *Receiver's costs of appointment, and passing account.*

	Lower Scale. £	s.	d.	Higher Scale. £.	s.	d.
—— Term, 187—.						
Instructions for, drawing and ingrossing Recognizance	1	15	0	2	12	6
Attending summons when same settled, and attending at Judge's Chambers for allowance thereof						
[Copies of draft for parties to whom copies are directed to be handed.]						
Paid for parchment (*m*)						
Instructions for affidavit of sureties . .	0	6	8	0	6	8
Drawing and ingrossing same fo. 4 .	0	5	4	0	5	4
Attending sureties on their being sworn thereto	0	6	8	0	6	8
Paid oaths, filing, and for office copy . .						
Making appointment with receiver and his sureties, and attending them on acknowledging recognizance	0	13	4	0	13	4
Paid thereon						
Attending to enrol recognizance . .	0	6	8	0	6	8
Paid enrolling	0	7	6	0	7	6
Attending at Judge's Chambers, when order appointing receiver made . . .	0	6	8	0	13	4
Paid for order	0	10	0	1	0	0
Attending passing and to enter same . .	0	6	8	0	13	4
Copy order for the Judge . . .	0	2	6	0	2	6
Letters, &c.	0	5	0	0	5	0
If the order appoints the receiver subject to his giving security, the following will be the charges in lieu of the above :—						
Copy order for the Judge . . .	0	2	6	0	2	6
Preparing summons to proceed, and attending to get same filled up and sealed at Chambers	0	6	8	0	6	8
Paid stamp	0	1	0	0	3	0
Copy summons to leave at Chambers .	0	2	0	0	2	0
[Copies to serve and service thereof on parties having leave to attend.]						

(*l*) Regul. 8 Aug. 1857, Sched. No. 15; Dan. Pr. 1601; and *post*, Chap. XXXIX.

(*m*) The recognizance is not now chargeable with any stamp duty.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Attending thereon	0	6	8	0	13	4
[The same charges as above relating to the recognizance.]						
Making copy certificate, fo. 6	0	2	0	0	2	0
[Copies for the parties to whom copies are directed to be handed.]						
Attending adjourned summons when certificate settled	0	6	8	0	13	4
Transcribing certificate	0	2	0	0	2	0
Paid for stamp	1	0	0	1	0	0
Attending appointment to sign	0	6	8	0	6	8
Attending to bespeak and for office copy certificate	0	6	8	0	6	8
Paid for office copy	0	2	0	0	2	0
Letters, &c.	0	5	0	0	5	0
—— Term, 187—.						
Drawing receiver's 1st account and copy, per folio	0	0	8	0	1	4
Preparing summons to proceed thereon, and attending to get same filled up and sealed at Chambers	0	6	8	0	6	8
Paid stamp	0	1	0	0	3	0
Copy summons to leave at Chambers	0	2	0	0	2	0
[Copies and services on plaintiff and each defendant having leave to attend.]						
[Copies of account for parties to whom copies are directed to be handed.]						
Attending summons, when account passed and costs settled						
Entering account and duplicate in books						
Paid for books						
Instructions for affidavit verifying account and duplicate	0	6	8	0	6	8
Drawing and ingrossing same, fo. 5	0	6	8	0	6	8
Preparing two exhibits	0	2	0	0	2	0
Attending receiver on his being sworn	0	6	8	0	6	8
Paid oath and two exhibits						
Paid filing and for office copy	0	4	2	0	4	2
Making copy draft certificate of passing account, fo. 8	0	2	8	0	2	8
[Copies for parties to whom copies are directed to be handed.]						
Attending settling draft certificate	0	6	8	0	13	4
Transcribing certificate	0	2	8	0	2	8
Paid stamp	1	0	0	1	0	0
Paid per centage on £——		(*n*)			(*n*)	

(*n*) See *ante*, No. 1554 (1).

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Attending appointment to sign certificate .	0	6	8	0	6	8
Attending to bespeak and for office copy .	0	6	8	0	6	8
Paid for office copy	0	2	8	0	2	8
Drawing this bill of costs and copy, fo. 8 .	0	5	4	0	5	4
[Copies for parties to whom copies are directed to be handed.] .						
Attending to procure balance to pay into Court	0	6	8	0	6	8
Attending Accountant-General for directions to pay balance into the bank, and attending to pay same and to file cashier's receipt: as allowed by order of 30th Jan. 1857 (*o*)						
Paid for office copy certificate of payment .	0	1	8	0	1	8
Letters, &c.	0	5	0	0	10	0

1570. Plaintiff's, or defendant's, costs of passing receiver's account (*p*).

2. *Plaintiff's or Defendant's costs of passing Receiver's account.*

—— Term, 187—

Attending summons when account passed and costs settled						
Attending settling certificate . . .	0	6	8	0	13	4
Drawing this bill of costs and copy, fo. 4 .	0	2	8	0	2	8
[Copies for parties to whom copies are directed to be handed.] . . .						
Attending appointment to sign certificate .	0	6	8	0	6	8
Letters, &c.	0	5	0	0	5	0

Section VI.—Costs of proving a Debt.

1571. Ordinary costs allowed to the creditor (*q*).

	£	s.	d.
Instructions	0	6	8
Drawing and engrossing affidavit of debt, 4 folios . .	0	5	4
Attendance to be sworn	0	6	8
Oath (2*s.* 6*d.* in the country)	0	1	6
Preparing and paid marking exhibit	0	2	6
Filing affidavit	0	2	6
Two notices of filing	0	5	0
Attendance to enter claim	0	6	8
Attending the adjudication	0	6	8
	£2	3	0

(*o*) Now Regul. to Ord. Sched. 2; see *ante*, No. 1552 (5).

(*p*) See Regul. 8 Aug. 1857, Sched. No. 16.

(*q*) See Dan. Pr. 1108, n. (*s*). The costs ordinarily allowed for proving a debt, irrespective of the order of 27 May, 1865 (*ante*, No. 1563), are—£2 2*s.* 0*d.*, if the debt amounts to £5 or upwards, and £1 15*s.* 0*d.*, if under that sum. The allowance of £2 2*s.* 0*d.* is supposed to cover the various items set forth in No. 1571.

Section VII.—Scale of Allowance to Witnesses in the Superior Courts of Common Law.

1572. Directions to Masters: Hilary Term, 1853 (*r*).

	If resident in the town in which the cause is tried. £ s. d.	If resident at a distance from the place of trial. £ s. d.
Common witnesses: such as labourers, journeymen, &c., *per diem*	0 5 0	0 5 0 to 0 7 6
Master tradesmen, yeomen, and farmers, *per diem*, from	0 7 6 to 0 10 0	0 10 0 to 0 15 0
Auctioneers and accountants, *per diem*	0 10 6 to 1 1 0	0 10 6 to 1 1 0
Professional men, *per diem*	1 1 0	
Professional men, inclusive of all except travelling expenses, *per diem*		2 2 0 to 3 3 0
Attorneys' or other clerks, *per diem*	0 10 6	0 15 0 to 1 1 0
Engineers and Surveyors, *per diem*	1 1 0	1 1 0 to 3 3 0
Notaries, *per diem*	1 1 0	1 1 0
Gentlemen	1 1 0 with *subpœna*, but no daily allowance except after the first day, and then a reasonable sum for refreshment and conveyance.	
Esquires		
Bankers		1 1 0 *per diem*.
Merchants		
Females, according to station in life, *per diem* from	0 5 0 to 0 10 0	0 5 0 to 1 0 0
Police inspector, *per diem*	0 5 0	0 7 6 to 0 10 0
Police constable	0 3 0	0 5 0 to 0 7 6

(*r*) 1 E. & B. App. 75; Chitty's Arch. 1775 17 76; Taylor on Evid. s. 1126,

If the witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one cause, they will be entitled to a proportionate part in each cause only. The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1*s.* per mile one way.

SECTION VIII.—SCALE OF ALLOWANCE TO ACCOUNTANTS, BY THE COURT OF BANKRUPTCY.

1573. Accountants in Bankruptcy (*s*).

For preparing balance sheet, investigating accounts, &c.:

	£	*s.*	*d.*
Principal's time, per day of eight hours, including necessary affidavit	2	2	0
Chief Clerk's time	1	1	0
Other clerk's time, per day of eight hours	0 10 0 to 0 15 0		

These charges to include stationery.

SECTION IX.—CERTIFICATE UNDER THE PATENT LAW AMENDMENT ACT, 1852, SEC. 43.

1573a. Certificate of a Judge in Equity that validity of letters patent came in question, on the trial of a question of infringement (*t*).

I hereby certify that the validity of the letters patent of A. P., mentioned in the third paragraph of the plaintiff's bill, and in the order of the 12th day of June, 1869, came in question in this suit, and on the trial of the questions of fact before me on the 23rd, 24th, and 25th days of Nov., 1869.

(*Signature of Judge, and date.*)

SECTION X.—METHOD OF TAXATION (*u*).

1574. Request to Taxing Master to moderate bill of costs (*v*).

See *ante*, Nos. 1304, 1304a.

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n.; and see *ib.* s. 1127. As to the remuneration of witnesses in Chancery, see Dan. Pr. 803; Taylor, s. 1128. And see, for scales of allowance in the following Courts:—*Admiralty:* Taylor on Evid. s. 1126, n. *Bankruptcy:* Ord. in Bank. 1 Jan. 1870 (Scale of allowances); W. N. (1870), Pt. II. 42. *County Courts:* Pollock & Nicol, 624. *Probate:* Taylor, s. 1126, n.

(*s*) See Ord. in Bank. 1 Jan. 1870 (Scale of allowances); W. N. (1870), Pt. II. 43; but subject to variation by the trustees, with the consent of the committee of inspection: or of the Court, where there is no committee: *ib.;* and see *ib.* for the allowances to auctioneers, brokers, and surveyors. As to the allowance in Chancery to accountants, see Dan. Pr. 1048, n. (*n*).

(*t*) *Cannington* v. *Nuttall*, M. R. 2 Dec. 1869; and see the Patent Law Amendment Act, 1852 (15 & 16 Vic. c. 83), s. 43; Dan. Pr. 1303.

(*u*) See Dan. Pr. 1307—1319. As to the duties, powers, and authorities of the Taxing Masters, see 5 & 6 Vic. c. 103, s. 4; Ord. XL. 1.

(*v*) See notes to Nos. 1304, 1304a., *ante.* For form of request that Taxing

1575.
Headings of bills of costs (*x*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

The bill of costs—*If so:* and costs, charges, and expenses—of the plaintiffs:

[*Or,*

Officer of another Court will tax a bill of costs claimed in Chancery, see *ante*, No. 1305.

(*x*) A bill of costs for taxation should be copied on foolscap paper, bookwise: with a clear margin on the left hand side of each page, in order that the taxed-off amounts may be there placed by the Master, in taxing the bill: Dan. Pr. 1311. For tables of fees and charges, see *ante*, No. 1545, *et seq.* For forms and precedents of bills of costs, see Morgan & Davey, as under:—Administration suit by summons: plaintiff, 465—469, 469—472; defendant, 472—475. Appeal motion, 450. Appeal petition, 449. Demurrer: plaintiff, 448; defendant, 463. Dismiss bill (motion to): 463—464. Exceptions to answer: plaintiff, 464; defendant, 468. Formal parties (service on): 447. General directions: 426—428. General charges: xiii.—xxi., 505—508; and *ante*, Nos. 1551—1554, 1556—1568. Guardians and maintenance, by originating summons: applicant, 475—477, 479—480; respondent, 477—478. The like, by ordinary summons: applicant, 494—495; respondent, 496. Injunction: 436—440. Lands Clauses Act: petitioner's costs under, 484—487, 487—489. Maintenance: *see* Guardians. Motion: applicant, 463—464; respondent, 464—465. Petition: petitioner, 484—487, 487—488, 489—490, 490—491; respondent, 462, 491—492, 497. Plea: plaintiff, 448; defendant, 463. Printing answers, affidavits, and depositions, 428—429; and *ante*, Nos. 1556, 1561. Receiver: his costs of appointment, and passing first account, 497—499; and *ante*, No. 1569; and of passing final account, 500; plaintiff or defendant, on passing account, 499; and *ante*, No. 1570; petition for discharge of receiver, 490—491. Solicitor's bill: petition of course to tax, and of taxation, 509. Special case: plaintiff, 480—482; defendant, 482—484. Suit by bill, generally: plaintiff, 429—436, 436—440, 441—444, 444—447; defendant, 451—456, 456—461, 461—462. Summons (originating): 475—477, 477—478, 479—480, 493—494, 496. Summons (ordinary): 494—495, 496. Conveyancing charges in common cases: general charges, 509; lessor, on a lease, 504; mortgagor, on a mortgage, 503; mortgagee, on a mortgage, 504; registration of a deed, 505; vendor, on a sale and conveyance, 500—502; purchaser, in like case, 502—503; and see *ante*, No. 1553. For the ordinary costs allowed to a creditor for proving his debt, see *ante*, No. 1571. And see, as to the costs of the following subjects:—Abstracts: *Rumsey* v. *Rumsey*, 21 Beav. 40. Accountants: *ante*, No. 1573. Adjournments into Court: Dan. Pr. 1056. Affidavit, on delivery up by solicitor of documents, under order: *Re Catlin*, 18 Beav. 514. Affidavits on interlocutory applications: *Camille* v. *Donato*, 11 Jur. N. S. 26: 13 W. R. 358, L. C. Amendment of bill: Dan. Pr. 349—352. Ancient records (searches for, and translations of): *Churton* v. *Frewen*, W. N. (1867), 101: 15 W. R. 559, V. C. M. Answers: Dan. Pr. 633, 634, 678. Appearance by plaintiff for defendant: Dan. Pr. 403. Attachment: Dan. Pr. 395. Attendance of counsel (two) before examiner: *Hallowes* v. *Fernie*, W. N. (1867), 294: 16 W. R. 175, V. C. W. Attendance of counsel in Chambers: Dan. Pr. 1057. Attending in Chambers without leave: Dan. Pr. 1089. Auctioneers: Dan Pr. 1157. Bill of discovery: Dan. Pr. 1411. Boundary suit: Dan. Pr. 1034. Brief prematurely prepared: *Friend* v. *Solly*,

Or, of all the defendants:
Or, of the defendants A. B., *&c.:*
Or, of C. D., and E. F., who, by an order dated the —— day of ——, 187—, have liberty to attend the proceedings—*or as may be:*
to be taxed—*If so:* as between solicitor and client—under the decree [*Or*, order] dated the —— day of ——, 187—.

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10 Beav. 329; *Re Pender*, 10 Beav. 390. Brief to a second or third counsel: Dan. Pr. 1306, n. (*v*). Brief to Attorney-General, in a charity case: *Attorney-General* v. *Drapers' Company*, 4 Beav. 305. Cause struck out: Dan. Pr. 839. Consultations: Dan. Pr. 1306, n. (*v*). Contempts: Dan. Pr. 432, *et seq.* Contribution to costs: Dan. Pr. 1109. Conveyancing counsel's fees: Dan. Pr. 1047; and of private counsel in addition: *ib.* Copies of printed documents: *Underwood* v. *Secretary of State for India*, W. N. (1868), 136: 16 W. R. 752, V. C. G.; 16 W. R. 926, L. JJ. Costs in the cause: Dan. Pr. 1240. Costs of the day: Dan. Pr. 839. Counsel attending in Chambers: Dan. Pr. 1057. Counsel (two) attending before examiner: *Hallowes* v. *Fernie*, W. N. (1867), 294: 16 W. R. 175, V. C. W. Counsel's fees (payment of): *Re Beavan*, 23 L. J. N. S. 536: 2 W. R. 299, L. JJ.; *Re May*, 4 Jur. N. S. 1169, V. C. K. Counsel's fees (quantum of): Dan. Pr. 1306, n. (*v*). Counsel's fees, on appeals: *Sturgis* v. *Morse*, 26 Beav. 562. Counsel's consultation fees: Dan. Pr. 1306, n. (*v*). Counsel's retainer fees: *Green* v. *Briggs*, 7 Beav. 279. Counsel's refresher fees: 1 Grant's Pr. 253; Dan. Pr. 841, n. (*z*). Counsel's special fees: Dan. Pr. 1306, n. (*v*). Counsel's clerks' fees: *Re Cotton*, 9 Beav. 107, 110. Creditors and other claimants: Dan. Pr. 1108, 1109. Demurrer by witness: Dan. Pr. 826. Demurrer to bill: Dan. Pr. 510, 515, 516. Disclaimers: Dan. Pr. 612, 616, 617. Dismissing bill, and staying proceedings: Dan. Pr. 690, *et seq.* Dower suit: Dan. Pr. 1036. Enrolling decree: Dan. Pr. 888. Evidence taken abroad: Dan. Pr. 874. Examination *de bene esse:* Dan. Pr. 822. Examination under decree: Dan. Pr. 1063. Examiners' fees: Dan. Pr. 806, n. (*c*); and *ante*, No. 1558. Exceptions to answer: Dan. Pr. 674—676. Experts (visits of): *Churton* v. *Frewen*, W. N. (1867), 101, V. C. M. Fees to counsel: see *supra*. Formal parties: Dan. Pr. 357. Impertinent matter: Dan. Pr. 292, 1070. Inspection and copies of documents: Dan. Pr. Chap. XLII. Interlocutory applications: Dan. Pr. 1240. Interpreters: *Earl of Shrewsbury* v. *Trappes*, 8 Jur. N. S. 587: 10 W. R. 663, V. C. W. Issues: Dan. Pr. 1017, 1246. Journies: Dan. Pr. 1306, n. (*v*). Judge's notes of evidence: *Malins* v. *Price*, 9 Jur. 650, V. C. K. B. Just allowances: Dan. Pr. 1132. Letters from solicitor to client: *Re Brady*, 15 W. R. 632, M. R. Letters between solicitor's London and country offices: *Re Harle*, 17 W. R. 21, M. R. Motions: Dan. Pr. 1240, 1447—1449. New inquiry as to damages: Dan. Pr. 1010. New trials: Dan. Pr. 1015, 1018. Observations for counsel: *Davies* v. *Marshall* (No. 2), 1 Dr. & Sm. 564, 567: 7 Jur. N. S. 669; *Ernest* v. *Partridge*, 11 W. R. 715, V. C. W. Parties attending under order: Dan. Pr. 364. Partition suits: *Cannon* v. *Johnson*, W. N. (1870), 249: 19 W. R. 175, M. R.; and Dan. Pr. 1032. Paupers: Dan. Pr. 42, 142. Petitions: Dan. Pr. 1459—1461. Pleas: Dan. Pr. 603, 606, 608, 611. Printed copies of bill: Dan. Pr. 327. Printed copies of answer: Dan. Pr. 660. Procuration fee: *Re Bayley*, 2 W. R. 404, M. R. Purchaser's appearance: Dan. Pr. 1173. Quantum of fees: Dan. Pr. 1306, n. (*v*). Refreshers: 1 Grant's Pr. 253; Dan. Pr. 841, n. (*z*). Retainers: *Green* v. *Briggs*,

The same as No. 1225, *ante*.

1576. Certificate verifying copy of decree or order (*y*).

1577. Certificate of no previous reference (*z*).

(*Short title.*)

We [*Or*, I] hereby certify, that this cause [*Or*, matter] has not been already referred to any Taxing Master.

A. & B., plaintiff's solicitors [*or as may be*].

1578. Certificate of name of Taxing Master in rotation (*a*).

——, 187—.

Mr. —— is the proper Taxing Master to whom the taxation of costs in this cause [*Or*, matter] is referred.

X. Y., Sitting Master.

1579. Warrant on leaving a bill of costs (*b*).

(*Short title.*)

By virtue of an order of reference, I do appoint to consider of the matters thereby to me referred on —— day next, at nine of the clock in the forenoon, at my Chambers in Staple Inn : at

7 Hare, 279. Retainer of Attorney-General : *Nicholls* v. *Haslam*, 9 Jur. 649, V. C. E. Schedule of papers, on change of solicitor : *Rawlinson* v. *Moss*, 7 Jur. N. S. 1055 : 9 W. R. 733, V. C. W. Security for costs : Dan. Pr. 28—37, 300. Separate answers : Dan. Pr. 633. Separate briefs, or separate attendances at Chambers : *Brown* v. *Gellatly*, W. N. (1867), 190 : 15 W. R. 887, M. R. ; Dan. Pr. 1316. Sequestration : Dan. Pr. 922. Settling minutes : *Re Reece, Gould* v. *Dummett*, Law Rep. 2 Eq. 609 : 12 Jur. N. S. 614, M. R. Shorthand writer's notes : Dan. Pr. 1306, n. (*v*). Solicitor trustee : Dan. Pr. 1134, 1275. Special examiner : Dan. Pr. 861, n. (*y*) ; and *ante*, No. 1551. Special fees : Dan. Pr. 1306, n. (*v*). Summons abandoned : Dan. Pr. 1055. Surveyor's charges : *Attorney-General* v. *Drapers' Company*, Law Rep. 9 Eq. 69, M. R. Term fees : *Davies* v. *Marshall* (No. 2), 1 Dr. & Sm. 567 : 7 Jur. N. S. 669. Witnesses : Dan. Pr. 803 ; and *ante*, No. 1572. Written bill : Dan. Pr. 323. Written brief of bill, or of answer : Dan. Pr. 841, n. (*z*). For forms of bills of costs of appellant and respondent, on appeal to the House of Lords, see *post*, Nos. 1661, 1662.

(*y*) See Dan. Pr. 1311. The copy should be written on foolscap paper, bookwise ; and the certificate should be written in the margin of the first page : *ib.*

(*z*) This certificate should be written in the margin of the first page of the original decree or order, and of the certified copy : Dan. Pr. 1311.

(*a*) See Dan. Pr. 1378. This certificate is written in the margin of the first page of the original decree or order. The name of the Master in rotation is filled in by the Sitting Master, and the certificate is signed by him. A copy of the certificate must be added to the certified copy of the decree or order, before it is left : *ib.*

(*b*) See Dan. Pr. 1312. As to service of warrants, see *ib.* As to obtaining copies of bills of costs, and the form in which they should be written, see *ib.* 1312, 1313 ; and *ante*, No. 1542. For form of request for a copy, and under-

which time and place all parties concerned are to attend. Dated this —— day of ——, 187—.

X. Y.

On leaving the bill of costs—*If so:* and costs, charges and expenses—of the plaintiff [*or as may be*]: to be taxed under the decree [*Or*, order] dated the —— day of ——, 187.

1580.

Warrant to tax (*c*).

The same as No. 1579, *ante:* varying the time for the attendance; and substituting "To tax," for "On leaving."

1581.

Affidavit of service of warrant (*d*).

In Chancery.

(*Short title, and reference to the record.*)

On the —— day of ——, 187—, I served Mr. A. B., of (*Place of business*), the solicitor in this cause [*Or*, matter] for the defendant C. D. [*or as may be*], with the within warrant: by delivering a true copy thereof to, and leaving the same with, the said A. B., at (*State where*):

Or, with a clerk of the said A. B., at the office of the said A. B., situate at (*State where*), aforesaid:

and I, at the same time, produced and showed to the said A. B. [*Or*, to the said clerk] this original warrant.

On the oath of (*Name, &c., of the deponent*).

(*Signature of deponent.*) Sworn before me this —— day of ——, 187—.

(*Signature of Taxing Master*).

1582.

Statement of objections to the allowance or disallowance of items in a bill of costs as taxed (*e*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

Objections taken by the plaintiff [*or as may be*] to the taxation by X. Y., esquire, one of the Taxing Masters

taking to pay, see *ante*, No. 1544. As to leaving the papers with the Master's clerk, and vouching the bill before him, see Dan. Pr. 1313, n. (*y*). As to obtaining the assistance of an officer of another Court, see *ib.* 1314; 6 & 7 Vic. c. 73, s. 42; and *ante*, No. 1305.

(*c*) See Dan. Pr. 1312. As to the parties entitled to attend a taxation, see *ib.* 1313. As to the fees of taxation, see *ib.* 1314, n. (*e*); Ord. XXXIX. 8; and *ante*, No, 1554 (6). As to interest on costs, see 23 & 24 Vic. c. 127, s. 27; 33 & 34 Vic. c. 28, s. 17; Dan. Pr. 1243. As to the practice, on a direction to tax the costs only in case the parties differ, see Ord. XL. 39; Dan. Pr. 1315. As to the apportionment of costs, see Dan. Pr. 1296, 1316.

(*d*) See Dan. Pr. 1313. The affidavit is indorsed on the original warrant. A fee of 1*s.* 6*d.* is payable, by a fee fund stamp, for the oath: see *ante*, No. 1554 (6).

(*e*) See Dan. Pr. 1317; Ord. XL. 33. As to reviewing a taxation, see *ib.*

of this Court, of the bill of costs of the plaintiff [*or as may be*], under the decree [*Or*, order] dated the —— day of ——, 187—.

The plaintiff [*or as may be*] objects, for the following reasons, to the allowance [*Or*, disallowance] of the following items; namely:

1. Because, &c., } (*Set out the reasons, in numbered*
2. Because, &c., } *paragraphs;*

And then specify, by a list in a short and concise form, the items or item, or parts or part thereof, objected to.)

1583.

Warrant to proceed on the objections (*f*).

Proceed as in No. 1579, *ante, to* X. Y.; *and conclude thus:*

To proceed on the objections taken by the plaintiff [*or as may be*] to the taxation of his bill of costs [*or as may be*], under the decree [*Or*, order] dated the —— day of——, 187—.

1584.

Summons to review a taxation (*g*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*]: that it may be referred back to the Taxing Master to whom the taxation of costs in this cause [*Or*, matter] stands referred, to review his taxation under the decree [*Or*, order] dated the —— day of ——, 187— (*If so:* and the order to review, dated the ——day of ——, 187—), in respect of certain items of charge, in the bill of costs of the applicant [*or as may be*], which the said Taxing Master has, as the applicant is advised, wrongly allowed [*Or*, disallowed]: the particulars of which items respectively are set forth in the objections to the said taxation left by the applicant in the office of the said Taxing Master on the —— day of ——, 187—. And that the said Taxing Master may be directed to vary his certificate of taxation accordingly.

(*f*) See Dan. Pr. 1317; Ord. XL. 33.

(*g*) See Dan. Pr. 1318; and Ord. 17 April, 1867, rr. 2—4: Law Rep. 2 Ch. xv. For the practice on the summons, see Dan. Pr. 1318.

Section XI.—Payment of Costs: how enforced (*h*).

1. *By Subpœna.*

1585.

Præcipe for *subpœna* for payment of costs (*i*).

In Chancery.

(*Short title.*)

(*Reference to the record.*)

Seal a *subpœna* for £——, costs, on behalf of A. B., directed to C. D.

Taxing Master's certificate filed —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party suing out the writ: see ante*, No. 4, *or* 7 (*k*)).

1586.

Subpœna for payment of costs (*l*).

Victoria (*&c.: see ante*, No. 313).

To C. D., (E. F., and G. H. (*m*)), greeting:

We command you, (*If more than one, add:* and every of you), that you pay, or cause to be paid, immediately after the service of this writ, to A. B., or the bearer of these presents (*n*), £—— costs, in a cause wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants:

Or, in the matter of ——, *as the case may be:*

(*h*) See Dan. Pr. 1319—1328; The Debtors' Act, 1869 (32 & 33 Vic. c. 62); Ord. 7 Jan. 1870; and Morgan & Davey, 362—400. For tables of process to enforce payment of costs, see Seton, 1241. As to costs payable out of a fund in Court, see Dan. Pr. 1326. As to the costs of a solicitor appointed guardian *ad litem*, *ib.* As to the costs of a bill of discovery, *ib.* 1326, 1327; and to perpetuate testimony, *ib.* 1327; and *post*, Chap. XXXIV. As to costs of suits by or against the Crown, see Dan. Pr. 18, 128, 1327.

(*i*) For the mode of preparing and issuing a *subpœna* for costs, see Dan. Pr. 1319. A fee of 5*s.*, in a fee fund stamp affixed to the writ, is payable on issuing the *subpœna:* see *ante*, No. 1554 (5). As to when a *subpœna* for costs cannot be issued, see Dan. Pr. 1319, 1324.

(*k*) The *præcipe* must contain the name or firm, and the place of business or residence, of the solicitor or solicitors intending to sue out the *subpœna;* and where he or they is or are agent or agents only, then also the name or firm and place of business or residence of the principal solicitor or solicitors: Ord. XXVIII. 1; Dan. Pr. 1319, n. (*z*).

(*l*) Ord. XXVIII. 2, and Sched. E. No. 4: as varied by Ord. 7 Jan. 1870, r. 4; Dan. Pr. 1319. As to correcting errors in the *subpœna*, before service, see Ord. XXVIII. 5; Dan. Pr. 1320; and *ante*, No. 762, n. (*p*).

(*m*) The *subpœna* may contain three names, where necessary or required: Ord. XXVIII. 3; Dan. Pr. 1319.

(*n*) No other authority for the bearer to receive the costs than the writ itself is required: Dan. Pr. 1321.

by our Court of Chancery adjudged to be paid by you the said C. D. (E. F. and G. H.): under pain of (*o*) such process for contempt as the Court shall award, in default of payment. Witness (*&c.: Conclude as in* No. 313, *ante*).

1587. Indorsement thereon (*p*).

The same as No. 4, or 7, *ante*.

1588. Motion paper, for substituted service of *subpœna* (*q*).

Formal parts: see ante, No. 53.

To move on behalf of (the plaintiff) A. B., that service on F. E., of (*residence and addition*),

Or, F. E. and H. G., members of the firm of E. and G., of (*Place of business and addition*), or upon either of them,

of a *subpœna* for payment of the sum of £——, the amount of the said A. B.'s taxed costs, directed by the order dated the ——, 187—, to be paid to him by (the defendant) C. D.: together with a copy of the order hereon: may be deemed good service on the said C. D.

The order, and Taxing Master's certificate, and an affidavit in support, accompany (*r*).

1589. Summons, for substituted service of *subpœna* (*s*).

Formal parts: see ante, No. 60.

on the part of the plaintiff (*Continue as in* No. 1588, *ante, to* on the said C. D.).

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2. *By Attachment against an Unprivileged Person* (*t*).

1590. Motion paper, or summons, for leave to issue attachment (*u*).

The same as No. 931, *ante*; but describe the contempt correctly.

(*o*) Where the *subpœna* is issued for costs payable under a decree or order which states that payment thereof may be enforced by attachment: as mentioned in Ord. 7 Jan. 1870, r. 9: insert, after "pain of," the words "an attachment issuing against your person and": *ib.* r. 4.

(*p*) See Ord. III. 2, 5; Dan. Pr. 378, 379, 1319.

(*q*) For order in like case, see *Denton* v. *Macneill*, M. R. 21 Dec. 1865, Reg. Lib. A. 2461; and see Seton, 1213, No. 2. As to service of the *subpœna*, see Dan. Pr. 1320; Ord. XXVIII. 6.

(*r*) As to the contents of the affidavit in support, see Dan. Pr. 1320; and *ante*, No. 286, par. 2, 3.

(*s*) As to when the application may be made by summons, see Dan. Pr. 1320. It is made *ex parte*: *ib.*

(*t*) As to enforcing payment of costs by attachment, see Dan. Pr. 1322, 1323; Ord. 7 Jan. 1870, rr. 4, 7—9; and see notes to Nos. 931—934, *ante*. As to the preparation, execution, and return of the attachment, see *ante*, No. 931, n. (*p*). A fee of 5*s.*, in a fee fund stamp affixed to the writ, is payable on issuing it: *ante*, No. 1554 (5).

(*u*) Dan. Pr. 1322. As to when this application is necessary, see *ib.*;

1591.

Attachment for non-payment of costs (*x*).

Præcipe: / *The writ:* / *Indorsement:* } The same as Nos. 932—934, *ante*; but describe the contempt correctly (*y*).

1592.

Affidavit of service of *subpœna*, and demand, and non-payment (*z*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I served C. D., the person named in the *subpœna* next hereinafter mentioned, with a *subpœna* issuing out of, and under the seal of, this honourable Court, by delivering to, and leaving with, the said C. D., at *(State where)*, in the (county) of ——, a true copy of the said *subpœna*, and of the indorsement thereon; and I at the same time showed to the said C. D. the said *subpœna*, so under seal as aforesaid.

2. By the said *subpœna* the said C. D. was commanded to pay, or cause to be paid, immediately after the service of the said writ, to A. B., or the bearer thereof, the sum of £——, costs in this cause [*Or*, matter].

3. At the time of the service aforesaid of the said *subpœna*, I demanded of the said C. D. the said sum of £——; but the said C. D. then refused to pay the same, or any part thereof, to me.

4. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, lastly say, that the said A. B. has not paid the said sum of £——, or any part thereof (*a*), to me, or to the said A. B., or to any other person or persons for the use, or on the account, of the said A. B.

---

3. *By Sequestration against an Unprivileged Person* (*b*).

1593.

Præcipe for a sequestration for non-payment of costs, where it issues without special order (*c*).

The same as No. 943, *ante*; but describe the contempt correctly.

Ord. 7, Jan. 1870, r. 8. The application must be supported by evidence to satisfy the Court or Judge that the case comes within the exceptions contained in the 4th section of the Debtors' Act, 1869 (32 & 33 Vic. c. 62 : Dan. Pr. 1322, n. (*u*)); and is granted *ex parte:* unless the Court or Judge thinks fit to require notice of the application to be served: Ord. 7 Jan. 1870, r. 9.

(*x*) See Dan. Pr. 1322; and notes to Nos. 932—934, *ante*.

(*y*) As thus: "for not paying the sum of £——, the residue of the sum of £——, costs, to G. S., in a cause wherein the said J. T. is plaintiff, and F. R. and others are defendants:" *Troup* v. *Ricardo*, 13 Dec. 1866, Reg. Lib. B. 2489.

(*z*) See Dan. Pr. 1322; Ord. XXVIII. 8. The affidavit need not be sworn immediately before the attachment is issued: Dan. Pr. 1322.

(*a*) As to part payments, see *post*, No. 1594, n. (*f*).

(*b*) See Dan. Pr. 1322, 1323; Ord. 7 Jan. 1870, rr. 3, 5, 7, 8.

(*c*) *Ibid.*; and notes to Nos. 943, 944, *ante*.

1594.
Writ of sequestration, in like case (*d*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert the names of not less than four Commissioners* (*e*)), greeting:

Whereas, by an order made by us in our High Court of Chancery on the —— day of —— now instant [*Or*, last], in a certain cause there depending, wherein A. B. is plaintiff, and C. D. is defendant,

Or, a certain matter there depending, intituled (*Set out the title of the matter, as in the order*),

it was (*If so:* amongst other things) ordered (*Recite, in the past tense, such part of the order as directs taxation and payment of the costs*): And whereas the said costs so directed to be taxed as aforesaid have been taxed at the sum of £——: as by the certificate of X. Y., esquire, one of the Taxing Masters of the said Court, dated the —— day of ——, and filed in the said cause [*Or*, matter] on the —— day of ——, appears: And whereas the said C. D. has been duly served with a *subpœna* for the said costs, as by the affidavit of (*Name of person who served the subpœna, and demanded the costs*), filed in the said cause [*Or*, matter] on the —— day of —— appears: And whereas the said C. D. has not paid the said sum of £——, or any part thereof (*f*), as by the said order directed: as by the affidavit of (*Name of person who served the subpœna, &c.* (*f*)), filed in the said cause [*Or*, matter] on the —— day of —— [*Or*, as by the said affidavit] appears (*g*).

Know ye, therefore (*&c.: Continue as in* No. 331, *ante, to the end*).

1595.
Indorsement thereon (*h*).

The same as No. 332, *ante*.

1596.
Sequestration, in other cases (*h*).

Præcipe: } The same as Nos. 330—332, *ante;* but describe
The writ: } the contempt correctly.
Indorsement: }

(*d*) See Dan. Pr. 1322, 1323; Ord. 7 Jan. 1870, rr. 3, 5, 7, 8. For form of the writ, where it issues as of course for non-payment of money, see *ante*, No. 944. Where a gross sum is directed to be paid in lieu of taxed costs, payment may be enforced either by *subpœna* and sequestration, or by the remedies provided to enforce payment of a sum of money.

(*e*) See *ante*, No. 331, n. (*b*); Dan. Pr. 912, n. (*p*).

(*f*) If part has been paid, the affidavit of default must state the date of payment, the amount paid, and the amount remaining due and unpaid. An affidavit of part payment is usually made by the party entitled to the costs; but it may be made by his solicitor.

(*g*) For form of affidavit, see *ante*, No. 1592.

(*h*) See Dan. Pr. 1323; and notes to Nos. 330—332, *ante*.

1597.
Motion paper for a *habeas*, on Sheriff's return that contemnor is in prison (*i*).

Formal parts: see ante, No. 53.

To move on behalf of A. B., for a *habeas*, directed to the Keeper of the City prison at Holloway [*or as may be*], to bring C. D. to the bar, for his contempt in not paying £—— costs to the said A. B., pursuant to the decree [*Or*, order] dated ——, 187—.

The decree [*Or*, order] and Sheriff's return accompany.

1598.
The *habeas* (*k*).

Præcipe: }
The writ: } The same as Nos. 390—392, *ante*; but describe
Indorsement: } correctly the custodian of the contemnor.

1599.
Motion paper for a sequestration, on the Keeper's certificate, or Serjeant-at-Arms' return (*l*).

Formal parts: see ante, No. 53.

To move on behalf of A. B. for a sequestration against C. D., for breach of the decree [*Or*, order] dated the ——, 187— : on the certificate of the Keeper of the City prison at Holloway [*Or*, on the return of the Serjeant-at-Arms—*or as may be*] that the said C. D. is in his custody.

The decree, [*Or*, order], and the certificate [*Or*, return], accompany.

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4. *By Sequestration against a Peer, or Member of Parliament* (*m*).

1600.
Process by sequestration (*n*).

The same as Nos. 1006—1012, *ante*.

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5. *By Sequestration against a Corporation Aggregate* (*o*).

1601.
Process by *distringas*, and sequestration (*p*).

The same as Nos. 1014—1019, *ante*.

(*i*) As to bringing up the contemnor by *habeas*, preparatory to a sequestration, see Dan. Pr. 1323. For form of order for the writ, see Seton, 1222; and for the practice as to the writ of *habeas*, see Dan. Pr. 414; and see *ante*, Nos. 939—942, and notes thereto. For form of motion paper for the Serjeant-at-Arms, on the Sheriff's return *non est inventus*, see *ante*, No. 938; and for the practice in like case, see *ib.* n. (*y*).

(*k*) See Dan. Pr. 1323; and notes to Nos. 390—392, *ante*.

(*l*) See Dan. Pr. 1323. For order in like case, see Seton, 1224; and for the practice as to sequestration on final process, see *ante*, No. 943, *et seq.*, and notes thereto.

(*m*) See Dan. Pr. 1324.

(*n*) *Ibid.*; and notes to Nos. 1006—1012, *ante*. For forms of orders *nisi* and absolute for a sequestration, see Seton, 1225, 1226.

(*o*) See Dan. Pr. 1324.

(*p*) *Ibid.*; and notes to Nos. 1014—1019, *ante*. For form of order for a equestration, see Seton, 1227.

6. *By Fieri Facias* (*q*).

1602.

Prœcipe for a *fieri facias*, for payment of costs only (*r*).

In Chancery.

(*Short title.*) (*Reference to the record.*)

Seal a writ of *fieri facias*, directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], against C. D., of (*residence and addition*), for not paying the sum of £——, costs, to A. B.

Order (*directing payment*) dated —— day of ——, 187—.

Taxing Master's certificate dated —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1603.

The writ (*s*).

Proceed as in No. 966, *ante, to* cause to be made; *and continue as follows:*

the sum of £——, for certain costs which were lately, before us in our High Court of Chancery, in a certain cause [*Or*, certain causes—*as the case may be*] wherein A. B. is plaintiff, and C. D. is defendant [*Or*, in a certain matter there depending, intituled, "In the matter of E. F."—*as the case may be*] by a decree [*Or*, order—*as the case may be*] of our said Court, bearing date the —— day of ——, decreed [*Or*, ordered—*as the case may be*] to be paid by the said C. D. to A. B.; and which costs have been taxed and allowed by X. Y., esquire, one of the Taxing Masters of our said Court, at the said sum of £——: as appears by the certificate of the said Taxing Master, dated the —— day of ——. And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made interest on the said sum of £——, at the rate of £4 per cent. per annum from the —— day of —— (*t*). And that you have that money and interest before us, in our said Court, immediately after the execution hereof, to be paid (*Conclude as in* No. 966, *ante*).

1604.

Indorsement thereon (*u*).

The same as No. 967, *ante;* but say: "Levy £—— (*the amount of the costs*), and interest thereon from the —— day of —— (*the date of the certificate of taxation*), together with," *&c.*

(*q*) See Dan. Pr. 1325. As to this writ, see *ante*, No. 965, nn. (*d*), (*e*), (*f*).

(*r*) See Braithwaite's Pr. 217. For forms of the writ, *prœcipe*, and indorsement, when the writ is issued for payment of money only: or money and interest: or money and costs: or money, interest and costs, see *ante*, Nos. 965—976; and see the notes thereto, for the practice relative to this writ.

(*s*) See Ord. XXIX. 6, and Sched. F. No. 5.

(*t*) The date of the certificate of taxation.

(*u*) See Braithwaite's Pr. 217; and note to No. 967, *ante*.

1605.

Venditioni exponas (*x*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 977—979, *ante*.

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7. *By Elegit* (*y*).

1606.

Præcipe for an *elegit*, for payment of costs only (*z*).

The same as No. 1602, *ante*; substituting "*elegit*," for "*fieri facias*."

1607.

The writ (*a*).

Proceed as in No. 983, *ante, to* pay unto A. B.; *and continue as follows:*

certain costs as in the said decree [*Or*, order—*as the case may be*] mentioned; and which costs have been taxed and allowed by X. Y., esquire, one of the Taxing Masters of our said Court, at the sum of £——: as appears by the certificate of the said Taxing Master, dated the —— day of ——. And afterwards (*Proceed as in* No. 983, *ante, to the first* until; *and continue as follows:*)

the said sum of £——, together with interest thereon at the rate of £4 per cent. per annum from the said —— day of —— (*b*), shall have been levied. Therefore we command you (*Proceed as in* No. 983, *ante, to the second* until; *and continue as follows:*)

the said sum of £——, together with interest as aforesaid, shall have been levied. And in what manner (*Conclude as in* No. 983, *ante*).

1608.

Indorsement thereon (*c*).

The same as No. 1604, *ante*.

(*x*) See Dan. Pr. 1325; and notes to Nos. 977—979, *ante*.

(*y*) See Dan. Pr. 1325. As to this writ, see *ante*, No. 965, nn. (*d*), (*e*), (*f*).

(*z*) See Braithwaite's Pr. 202. For forms of the writ, *præcipe*, and indorsement, when issued for payment of money: or money and interest: or money and costs: or money interest and costs: see *ante*, Nos. 982—990; and see the notes thereto, for the practice relative to this writ.

(*a*) See Ord. XXIX. 6, and Sched. G. No. 2.

(*b*) The date of the certificate of taxation.

(*c*) See Braithwaite's Pr. 201.

CHAPTER XXXII.

APPEALS AND REHEARINGS.

SECTION I.—GENERALLY (*a*).

1609.

Notice of motion to stay proceedings, pending an appeal (*b*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B. [*or as may be*], that all proceedings upon or under the decree [*Or*, order] dated the —— day of ——, 187—, made in this cause by his lordship the Master of the Rolls [*or as may be*], may be stayed, pending the petition of appeal and rehearing therefrom, which has been presented by the said A. B. to the Lord High Chancellor [*or as may be*].

SECTION II.—APPEALS AND REHEARINGS IN THE COURT OF CHANCERY (*d*).

1610.

Notice of motion, by a person not a party to the record, for leave to present a petition of rehearing (*c*).

Formal parts: see ante, No. 55.

on the part of A. B., of (*residence and addition*), that he may be at liberty to present and file, and to appear on the hearing of, a petition in this cause: praying that (*Recite the prayer*).

(*a*) See Dan. Pr. 1329—1339; Ord. XXXI.

(*b*) See Dan Pr. 1339. The application to stay must be made first to the Judge who pronounced the decree or order: *ib.* 1338; Ord. VI. 12. For the cases in which the Court will suspend the execution of a decree or order, pending an appeal, and on what terms, see Dan. Pr. 1335—1339.

(*c*) See Dan. Pr. 1348. For order in like case, see *Jopp* v. *Wood*, M. R. 23 Jan. 1864, Reg. Lib. A. 183: 33 Beav. 372.

(*d*) See Dan. Pr. 1339—1360. For the methods of preventing and vacating the enrolment of a decree or order, see Dan. Pr. 879, *et seq.*; and see *ante*, No. 887, *et seq.* For the circumstances under which an appeal may be transferred from the Lord Chancellor to the Lords Justices, and *vice versâ*, and the mode of making the application, see *Williams* v. *Glenton*, 14 W. R. 89, L. C. As to what decrees and orders may be reheard, see Dan. Pr. 1340—1342. As to the constitution of the Court of Appeal in Chancery, see 14 & 15 Vic. c. 83; 30 & 31 Vic. c. 64: amended by 31 & 32 Vic. c. 11; Dan. Pr. 1339, 1340. As to appeals from the Court of Chancery of the County Palatine of Lancaster, see

1611. Petition of appeal and rehearing, before the Court of Appeal (*e*).

Title—and address to the L. C. (*f*): *see ante*, No. 56.

The humble petition and appeal of the above named plaintiff [*or as may be*].

Showeth as follows:

1. *Recite the decree or order appealed from* (*g*); *as thus:* By a

17 & 18 Vic. c. 82, ss. 1, 2; Dan. Pr. 1329, n. (*b*). As to appeals from the Vice-Warden of the Stannaries on the Equity side, see 18 & 19 Vic. c. 32, s. 26, and Gen. Ord. of the Stannaries (1863); and from the Stannaries Court, under the Companies Act, 1862 (25 & 26 Vic. c. 89), see *ib.*, s. 124, and Gen. Ord. 28 July, 1869. As to appeals from the County Courts, under the County Courts Act, 1865 (28 & 29 Vic. c. 99), see Dan. Pr. Chap. XLV. s. 29; and *post*, Chap. XLV. s. 29. As to appeals in charity cases, see Dan. Pr. Chap. XLV. s. 2; and *post*, Chap. XLV. s. 2. The following is a list of all the Lords Justices of the Court of Appeal in Chancery, with the dates of their appointments—1851, Oct. 8: Sir James Lewis Knight Bruce, and Robert Monsey Lord Cranworth—1853, Jan. 10: Sir George James Turner (*loco* Lord Cranworth, appointed Lord Chancellor)—1866, Oct. 29: Hugh MacCalmont Lord Cairns (*loco* Sir J. L. Knight Bruce, resigned)—1867, July 18: Sir John Rolt (*loco* Sir G. J. Turner, deceased)—1868, Feb. 8: Sir Charles Jasper Selwyn (*loco* Lord Cairns, appointed Lord Chancellor)—1868, Mar. 8: Sir William Page Wood (*loco* Sir John Rolt, resigned)—1869, Jan. 1: Sir George Markham Giffard (*loco* Sir W. P. Wood, appointed Lord Chancellor)—1870, July 2: Sir William Milbourne James (*loco* Sir C. J. Selwyn, deceased)—1870, Aug. 4: Sir George Mellish (*loco* Sir G. M. Giffard, deceased). For a list of the titles of all the holders of the Great Seal since the year 1846, see *ante*, No. 893, n. (*u*).

(*e*) See Dan. Pr. 1344, 1346. A fee of 20*s.* higher scale, and 5*s.* lower scale, is payable, in a fee fund stamp, impressed on or affixed to the first page of the petition: see Dan. Pr. 1349, n. (*o*); and *ante*, No. 1554 (7. 8). As to when an appeal may be made by petition of appeal and rehearing, or appeal petition, and when by motion, see Dan. Pr. 1341, 1356; Ord. XXXI. 8. The practice as to the mode of appealing from orders made on summons does not appear to be distinctly settled; it would seem, however, that an order made upon the hearing, or on the further consideration, of a suit commenced by administration summons, should be appealed by petition of appeal. In *Re Teil, Teil* v. *Barlow*, L.JJ., 22 July, 1862, Reg. Lib. B. 1912; and *Re Chick, Chick* v. *Hope*, L.JJ., 21 March, 1865, Reg. Lib. A. 720: where the orders had been made in Court: that course was pursued; and cases likely to give rise to an appeal should always be adjourned to the Court, and disposed of there. All other orders made on summons are appealed by motion: see Dan. Pr. 1341; and *post*, No. 1626. Matters dealt with upon petition adjourned to Chambers are appealed by an appeal petition. As to applications to discharge or vary orders made on motion or petition of course, or to discharge or vary, for irregularity, an order made on special petition, see Dan. Pr. 1343; Ord. VI. 5, 10; and to discharge or vary orders made by one Judge for another during vacation, see Dan. Pr. 1343; Ord. VI. 11. A petition of appeal by some of several plaintiffs against the others was allowed: the appellants having filed a supplemental bill: *Jopp* v. *Wood*, 2 De G. J. & S. 323; Dan. Pr. 1330.

(*f*) As to the address, see Dan. Pr. 1346.

(*g*) It is not necessary to state the proceedings anterior to the decree or order appealed from, or sought to be reheard: Ord. XXXI. 3; Dan. Pr. 1346. In

decree [*Or*, an order] dated the —— day of ——, 187—, made by your lordship [*Or*, by his lordship the Master of the Rolls—*Or*, by his honour the Vice-Chancellor Sir ——, *or as may be*], on the hearing of this cause [*or as may be*], it was declared [*Or*, ordered] that, *&c. &c.*

2. *Recite any order made since the decree or order appealed from, to carry its provisions into effect* (*h*).

3. Your petitioner is aggrieved by the said decree [*Or*, order] of the —— day of ——, 187—; and is advised that the same is erroneous (*i*)—*If so:* so far as it declares [*Or*, orders] that, *&c.*

Your petitioner therefore appeals from the said decree [*Or*, order; and humbly prays your lordship, that this cause may be reheard by your lordship; and that the plaintiff's bill in this cause may be dismissed as against your petitioner, with costs [*or as may be*].

Or that your lordship will make such further or other order touching the premises as may be right.

And your petitioner will ever pray, &c.

Note: It is intended (*&c.: see post*, No. 1614).

1612. Petition of rehearing, before the Master of the Rolls, or a Vice-Chancellor (*j*).

Title—and address to the L. C., or M. R. (*k*): *see ante*, No. 56.

The humble petition of the above named defendant A. B. [*or as may be*].

Showeth as follows:

1. *Recite the decree or order sought to be reheard; as thus:* By the decree [*Or*, an order] dated the —— day of ——, 187—, made by his honour the Vice-Chancellor [*Or*, by your lordship] on the hearing of this cause [*or as may be*], it was declared [*Or*, ordered] that, *&c. &c.*

2. The said order of the —— day of ——, 187—, is, as your petitioner is advised and submits, erroneous; and the same ought, as he submits, to be reversed or varied.

Your petitioner therefore humbly prays your lordship, that the said cause may be reheard before the said Vice-Chancellor;

Or, in a Rolls' cause, say: before your lordship;

and that the said order may be reversed or varied; and that it may be ordered that, *&c.*

Or that the said order may be varied in such

a complicated case, however, the petition may contain a full statement of the facts requisite to explain the effect and working of the decree which is appealed from: Dan. Pr. 1346.

(*h*) See Dan. Pr. 1347.

(*i*) It is not necessary to state in the petition the reasons why the petitioner is dissatisfied with the decree or order appealed from: Dan. Pr. 1346.

(*j*) See Dan. Pr. 1342, 1346; and notes to No. 1611, *ante*.

(*k*) As to the address, see Dan. Pr. 1346.

manner, or such other order may be made, as the nature of the case may require.

And your petitioner will ever pray, &c.

Note: It is intended (*&c.: see post*, No. 1614).

1613.

Petition of appeal and rehearing, from an order made on petition (*l*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition —or as may be*).

Showeth as follows:

1. *Statements to the same effect as in the original petition* (*m*).

2. On the —— day of ——, 187—, your petitioner [*or as may be*] presented his petition to your lordship [*or as may be*]: stating to the effect hereinbefore set forth, and praying that, *&c.* (*m*).

3. By an order dated the —— day of ——, 187—, made by your lordship [*or as may be*], on the hearing of the said petition, it was ordered that, *&c.*

4. Your petitioner is advised that the said order of the —— day of ——, 187—, is erroneous, and that, *&c.*

Your petitioner therefore humbly prays, that the said petition may be reheard by your lordship, or in such other manner as your lordship may direct; and that the said order of the —— day of ——, 187—, made on the said petition, may be reversed or varied so far as it directs that, *&c. &c.;* and that it may be ordered that, *&c. &c.;* and that such further or other order may be made on the said petition as may be necessary for giving effect to, or in consequence of the reversal of the said order, or the variation thereof in the manner, and to the extent aforesaid.

Or that your lordship will make such further or other order touching the premises as may be right.

And your petitioner will ever pray, &c.

Note: It is intended (*&c.: see post*, No. 1614).

1614.

Footnote to a petition of appeal and rehearing, or of rehearing (*n*).

Note: It is intended to serve the order for setting this petition of appeal and rehearing [*Or*, of rehearing] down for hearing upon (*Set out the names of the parties or persons intended to be served with the order*).

(*l*) See *Jopp* v. *Wood*, M. R.; Order dated 2 Dec. 1864, Reg. Lib. A. 2429; and see Dan. Pr. 1341, 1346, 1350; and notes to No. 1611, *ante*. For concise form of appeal petition from an order made on appeal by petition from an order of the Charity Commissioners, see *post*, Chap. XLV. s. 2.

(*m*) The practice on this point is not uniform. Thus, in *Robinson* v. *Cambrian Railways Company*, the petition of appeal, presented on 4 July, 1870, to the L. C., from an order made on petition by a V. C., commenced with a statement of such order; but where this course is adopted, a copy of the petition on which the order appealed was founded must be left on presenting the petition of appeal.

(*n*) A statement to this effect is required at the foot of every petition of

1615.
Certificate of counsel (*o*).

We humbly conceive this to be a proper case to be heard before your lordship: if your lordship shall so think fit (*p*).

(*Signatures of two counsel* (*q*).)

1616.
Undertaking to pay costs (*r*).

I consent to pay such costs as the Court may think fit to award in respect of any proceedings had since the decree [*Or*, order] made on the hearing of this cause by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——, *or as may be*], dated the—— day of ——, 187—.

A. B., the petitioner.

[*Or*, C. D., solicitor for the petitioner A. B.]

Witness to the signature of the petitioner, A. B.

C. D., of, *&c.*, the petitioner's solicitor (*r*).

1617.
Motion paper, for leave to appeal *in formâ pauperis* (*s*).

The same as No. 96, *ante*.

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appeal and rehearing, or of rehearing, and of every copy thereof: Ord. 19 Mar. 1869, r. 1; Dan. Pr. 1347.

(*o*) See Dan. Pr. 1347, 1348; *Robinson* v. *Cambrian Railways Company*, *ante* No. 1613, n. (*m*). The certificate is written and signed at the foot of the draft petition; and a copy of the certificate (including the signatures) is added to the foot of the original petition, and of the Judge's copy thereof, before the petition is presented.

(*p*) As to the form of the certificate when the appellant is a pauper, see Dan. Pr. 1351.

(*q*) It is not necessary that either of the counsel should be a Q. C.: Dan. Pr. 1347, n. (*z*). As to when the signature of one counsel will be sufficient, see *ib.* 1348.

(*r*) See Dan. Pr. 1349. The undertaking is written at the foot of the original petition; and where the undertaking is signed by the petitioner, his solicitor should attest his signature: *ib.* n. (*q*). For the mode of obtaining the order to set down, and of setting down a petition of appeal and rehearing, or of rehearing, see *ib.* 1349, 1351; Reg. Regul. 15 Mar. 1860, rr. 1, 12. For orders to set down a petition of appeal and rehearing before the Lord Chancellor, see *Miles* v. *Trumper*, L. C. 12 Jan. 1869, Reg. Lib. B. 7; *Simson* v. *Raven*, L. C. 1 Nov. 1870, Reg. Lib. B. 2600; and of rehearing before the Master of the Rolls, see *Ames* v. *Colnaghi*, M. R. 4 Mar. 1870, Rolls' Lib.; and see Seton, 1158. As to when a deposit is required, and how it is paid and repaid, see 15 & 16 Vic. c. 87, s. 41; Ord. XXXI. 4, 5; Dan. Pr. 1349, 1350. As to service of the order to set down, and mode of obtaining copies of the petition, see Dan. Pr. 1352. For form of request for copy and undertaking to pay for same, see *ante*, No. 1544.

(*s*) See Dan. Pr. 1332, 1351; and note to No. 96, *ante*. As to counsel's certificate, and dispensing with a deposit, in like case, see Dan. Pr. 1351. As to appeals in like case, by a married woman, or an infant, see *ib.*

1618.

Motion paper, to withdraw appeal, before service of order to set it down (*t*).

Formal parts (*u*): *see ante*, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave to withdraw his petition of appeal and rehearing presented to the Lord Chancellor on the ——, 187—. *If so:* and for a return of the deposit of £20 paid on setting down the petition.

The order to set down is left herewith. It has not been served.

1619.

Petition of course, for the like (*x*).

Title—and address to the L. C., (*u*): *see ante*, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. By an order dated the —— day of ——, 187—, made by your lordship [*or as may be*], on the petition of appeal and rehearing of your petitioner, it was ordered that (*Recite, in the past tense, the order to set down the petition*).

2. The said order of the —— day of——, 187— (*Order to set down the appeal*) has not yet been served on any person or party. *If the deposit has been paid, add:* Pursuant to the said order, your petitioner has deposited the sum of £20 with the Registrar, as thereby directed.

3. Your petitioner is now advised to withdraw his said petition.

Your petitioner therefore humbly prays, that he may be at liberty to withdraw his said petition of appeal and rehearing.

If the deposit has been paid, add: And that the sum of £20 deposited by him with the Registrar on setting down the same may be paid to your petitioner, or to Mr. A. B., his solicitor.

And your petitioner will ever pray, &c.

1620.

Motion paper, to withdraw appeal, by consent, after service of order to set it down (*y*).

Formal parts (*u*): *see ante*, No. 53.

To move on behalf of all parties [*or as may be*], that the petition of appeal and rehearing presented on the ——, 187—, by the plaintiff [*or as may be*], may be withdrawn; and that the deposit of £20, paid on setting down the same, may be returned to the petitioner, or his solicitor.

(*t*) See Dan. Pr. 1352. For order in like case, see *Bovill* v. *Goodier*, L.JJ., 22 Nov. 1866, Reg. Lib. A. 2557.

(*u*) The application should be made to the Court of Appeal; and not to the Court below.

(*x*) See Dan. Pr. 1352.

(*y*) *Ibid.* For order in like case, see *Greenhill* v. *Smart*, L. C. 7 July, 1866, Reg. Lib. A. 1819; Seton, 1153.

1621.
Petition of course, for the like, by consent (*z*).

Proceed as in No. 1619, *ante, to end of par.* 1 ; *and continue thus :*

2. The said order of the —— day of ——, 187— (*Order to set down appeal*), has since been served on (*State whom*).

3. Pursuant to (*Continue as in* No. 1619, *ante, to end of the prayer : including the clause as to repayment of the deposit*).

1622.
Notice of motion, in like case, where not consented to (*a*).

Formal parts of notice of motion to the L. C., or L.JJ. (*b*) : *see ante,* No. 55.

on the part of the plaintiff [*or as may be*], that he may be at liberty to withdraw the petition of appeal and rehearing presented by him in this cause on the —— day of ——, 187—, to the Lord High Chancellor ; and that the deposit of £20 paid on setting down the same may be returned to him, or his solicitor.

1623.
Special petition, in like case (*a*).

The same as No. 1621, *ante ;* and add footnote, *ante,* No. 58.

1624.
Notice of motion, to discharge, for irregularity, an order to set down a petition of rehearing (*c*).

Formal parts : see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the order dated the—— day of ——, 187—, made in this cause [*Or,* matter] by the Lord High Chancellor [*Or,* the Master of the Rolls], whereby it was ordered that the petition of the defendant A. B. [*or as may be*] for a rehearing should be set down to be heard before his lordship [*or as may be*], may be discharged for irregularity ; and that the said petition may be taken off the file of this Court ; and that the said A. B. may be ordered to pay the costs of this application.

1625.
Affidavit of service of, or of having been served with, order to set down appeal (*d*).

The same as No. 48, or 52, *ante.*

(*z*) See Dan. Pr. 1352. For order in like case, see *Lloyd* v. *Jones,* L. C. 29 April, 1868, Reg. Lib. B. 1025. For form of consent to the petition, see *ante,* No. 59.

(*a*) See Dan. Pr. 1352.

(*b*) The application should be made to the Court of Appeal ; and not to the Court below.

(*c*) See Dan. Pr. 1348.

(*d*) *Ibid.* 1353 ; Ord. XXXI. 7. For order dismissing an appeal, on non-appearance of the appellant, see Seton, 1152, No. 2. For orders on the hearing of an appeal or rehearing, see *ib.* 1151, 1152. As to counsel's brief, see Dan. Pr. 1353, n. (*g*). As to who are entitled to be heard on an appeal, see Dan. Pr. 1354. As to new evidence on an appeal, see Dan. Pr. 1355 ; and on the re-

1626.

Notice of motion, to discharge or vary an order made on motion, or ordinary summons (*d*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the order dated the —— day of ——, 187—, made in this cause [*Or*, matter] by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor Sir ——, *or as may be*], on the motion

Or, on the application by summons

of the defendant C. D. [*or as may be*], may be discharged.

Or, may be varied or altered in the respects following; namely: (*State what*).

1627.

Affidavit of service of the notice of motion (*e*).

The same as No. 47, *ante*.

Section III.—Appeals to the House of Lords (*f*).

1628.

Petition of appeal (*g*).

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition and appeal of A. B., of (*residence and addition* (*h*)).

Showeth:

That on the —— day of ——, 186—, L. M. T., wife of W. T., by J. T., her next friend, filed her bill of complaint in Her

hearing of a motion or petition, see Dan. Pr. 1357. As to oral examinations on appeals, and using the Judge's notes of *vivâ voce* evidence in the Court below, see *ib.* 1356; Ord. 5 Feb. 1861, r. 14. As to cross appeals, see Dan. Pr. 1357. As to the costs of rehearings and appeals, see *ib.* 1358, 1360; Morgan & Davey, 96—104.

(*d*) See Dan. Pr. 1356; and *ante*, No. 1611, n. (*e*). As to setting down the motion, see Dan. Pr. 1356; Reg. Regul. 15 March, 1860, rr. 1, 11. As to counsel's briefs, see Dan. Pr. 1356, n. (*i*). No certificate of counsel, or deposit, is required: *ib.* 1341, 1356. As to the rehearing of appeal motions, see *ib.*

(*e*) See Dan. Pr. 1356. An affidavit of having been served with notice of an appeal motion is unnecessary: as the motion will be treated as abandoned if the appellant fails to appear: *ib.* 1353, 1356.

(*f*) See Dan. Pr. 1360—1376. As to the jurisdiction of the House of Lords on Appeals and Writs of Error, see Sugd. H. L. Ca. 1. As to who may appeal, and the time allowed for appealing, see Dan. Pr. 1360, 1361; and as to the enrolment of decrees and orders preparatory to appealing, see *ante*, No. 887, *et seq.*, and notes thereto. For the practice of the House of Lords, on Appeals, see Stand. Ord. of H. L., relative to Writs of Error and Appeals, 1863; Macq. H. L. Prac.; Palmer's H. L. Prac.

(*g*) *Duke of Portland* v. *Topham*, H. L. 1 July, 1863; S. C. 11 H. L. Ca. 32; and see Dan. Pr. 1361.

(*h*) For the mode of describing the petitioner, see *ante*, No 159, *et seq.* Where the petitioner is a peer, the word "humble" is omitted.

Majesty's High Court of Chancery: which bill was afterwards amended by order dated, *&c.;* and, as amended, was against your petitioner, and L. H. B., *&c.*, as the defendants thereto; and the said bill, after setting forth at length the several deeds, matters, and things therein stated and set forth, prayed that the plaintiff might, *&c., &c.*

That answers to the said bill were put in by your petitioner, and by others of the defendants thereto; and evidence by affidavit and oral depositions was taken in the said cause; and the same having come on for hearing, upon motion for a decree, before the Right Honourable the Master of the Rolls, his honour made a decree therein, dated the 22nd day of July, 1862; and thereby it was declared that, *&c.;* and it was ordered that, *&c.*

That the said decree was drawn up, passed, and entered.

That a petition of rehearing, by way of appeal, was presented by the defendant L. H. B. to the Right Honourable the Lord High Chancellor of Great Britain, complaining of the declarations contained in the said decree, and of so much and such parts of the said decree as were consequent upon such declarations; and a petition of rehearing, by way of appeal against the said decree, was also presented by the plaintiff, complaining of the said decree, so far as the same ordered that the plaintiff's bill should stand dismissed: except as to the parts thereof in respect of which relief was given by the said decree.

That the said several petitions of appeal having come on to be heard before their lordships the Lords Justices of the Court of Appeal in Chancery, their lordships, by an order made on the hearing of the said petitions, and dated the 2nd day of May, 1863, ordered that the said decree of his honour the Master of the Rolls, dated the 22nd day of July, 1862, should be discharged; and their lordships declared that, *&c.;* and it was ordered that, *&c.*

That the said order of the Lords Justices was duly signed and enrolled on, &c.

That another order was made in the said suit by their lordships the Lords Justices of the Court of Appeal in Chancery, dated the 5th day of December, 1863, whereby, after stating that, *&c.*, it was ordered that, *&c.* (*i*).

That the last mentioned order has been duly signed and enrolled.

That your petitioner is advised that the said appeal of the said plaintiff from the aforesaid decree of his honour the Master of the Rolls of the 22nd day of July, 1862, ought to have been wholly dismissed; and that so far as relates to the dismissal of the said plaintiff's bill, to the extent to which it was dismissed by the said decree of the Master of the Rolls, the said order of the Lords Justices of the 2nd day of May, 1863, directing the discharge of the said decree of the Master of the Rolls, is erroneous; and that

(*i*) In the case cited *sup.* n. (*g*), the statements as to the order of the 5th Dec. 1863, were introduced into the petition by amendment, on special leave obtained on petition for that purpose: see *post*, No. 1652.

the said order of the 2nd day of May, 1863, is erroneous so far as it was thereby declared that, *&c.;* and so far as it was thereby ordered that, *&c.*

That your petitioner is also advised that the said order of the 5th day of December, 1863, is erroneous, so far as it was thereby ordered that, *&c.*

That your petitioner considers himself aggrieved by the said order of the 2nd day of May, 1863, so far as it was thereby declared that, *&c.;* and so far as it was thereby ordered that, *&c.*

That your petitioner also considers himself aggrieved by the said order of the 5th day of December, 1863, so far as the same directs that, *&c.*

And your petitioner therefore appeals from the said orders of the 2nd day of May, 1863, and the 5th day of December, 1863, to your lordships: humbly (*k*) praying

That your lordships will be pleased to reverse the said order of the Lords Justices of the 2nd day of May, 1863, to the extent, and in the particulars, hereinbefore complained of; and to affirm the said decree of the Master of the Rolls of the 22nd day of July, 1862, so far as thereby the said plaintiff's said bill was dismissed; or that your lordships will please to alter or vary the said order of the 2nd day of May, 1863, in such manner as to your lordships shall seem just:

And that your lordships will be pleased to reverse the said order of the 5th day of December, 1863, so far as the same directs any costs to be paid by your petitioner:

And that your petitioner may have such further and other relief in the premises as to your lordships, in your great wisdom, may seem meet:

And that an order may be issued, requiring the said L. M. T., L. H. B., *&c.*, to put in an answer to this your petitioner's appeal; and that service of such order on their solicitors in the above mentioned cause may be deemed good service.

And your petitioner will ever pray.

1629. Certificate of counsel, of cause of appeal (*l*).

We humbly conceive this to be a proper case to be heard before your lordships by way of appeal: if your lordships shall so think fit.

(*Signatures of counsel.*)

(*k*) Where the petitioner is a peer, the word "humble" is omitted.

(*l*) See Dan. Pr. 1362; Stand. Ord. H. L. No. CV., 3 Mar. 1697; amended 9 April, 1812. The certificate is written and signed at the foot of the draft of the petition. The petition must be engrossed on parchment, in words at length, in one continuous roll; and the names of counsel, as well to the appeal as to the certificate, must be added thereto: Dan. Pr. 1362.

1630.

Notice to respondents, of intention to appeal (*m*).

In Chancery.

(*Title of the cause.*)

Take notice, that on (Monday), the —— day of ——, 187—, or as soon after as may be, a petition of appeal will be presented to the House of Lords on behalf of the above named defendant D. P. [*or as may be*], against the decree [*Or*, order] dated the —— day of ——, 187—, made by the Lords Justices in this cause [*or as may be*].

Dated this —— day of ——, 187—.

B. & S.
Solicitors for the said D. P.

To the above named plaintiff L. M. T., and to Messrs. G. & R., her solicitors; and to the above named defendant L. H. B., and to Messrs. C. & B., his solicitors [*or as may be*].

1631.

Certificate of service of such notice (*n*).

I, J. M., clerk to Messrs. B. & S., of, *&c.*, solicitors for D. P., the petitioner within named, hereby certify that on the —— day of ——, 187—, I served Messrs. G. & R., of, *&c.*, the solicitors for the within named L. M. T., and Messrs. C. & B., of *&c.*, the solicitors for the within named L. H. B., with a notice that on the —— day of ——, 187—, or as soon after as might be, a petition of appeal would be presented to the House of Lords, on behalf of the within named D. P., against the decree [*Or*, order] dated the —— day of ——, 187—, within complained of. Dated this —— day of ——, 187—.

J. M.

1632.

Petition of the appellant, for leave to sue *in formâ pauperis* (*o*).

In the House of Lords.

On an Appeal from the High Court of Chancery in England.

Between A. B., ... Appellant.
C. D., ... Respondent.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble petition of the appellant.

Showeth:

That on the —— day of ——, 187—. your petitioner presented

(*m*) See Dan. Pr. 1362: Stand. Ord. H. L. No. CVII., 9 April, 1812.

(*n*) See Dan. Pr. 1362. The certificate is indorsed on the original petition of appeal; and the petition, so indorsed, is lodged with the Clerk of Appeals at the Parliament Office: *ib.* As to the recognizance to answer costs, see *ib.* 1363; Stand. Ord. H. L. No. CVIII. 22 June, 1829; Macq. 143, 776.

(*o*) This, and Nos. 1633, 1634, 1639, 1641, 1644, 1650, 1651 and 1657, *post*, are printed from Forms procured from the office of the Clerk of Appeals at the House of Lords: where copies of such forms can be obtained on application. As to appeals *in formâ pauperis*, see Dan. Pr. 1361.

to your lordships a petition of appeal: complaining of a decree [*Or*, order] made by the Lord High Chancellor of Great Britain,
Or, by their lordships, the Lords Justices of the Court of Appeal in Chancery—*or as may be*,
dated the —— day of ——, 187—.

That your petitioner being very poor, as by the affidavit and certificate annexed appears, is by reason of such his poverty unable to prosecute his appeal, unless he is admitted by your lordships to do so *in formâ pauperis*.

That by an order of the High Court of Chancery made in the said cause your petitioner was, on the —— day of ——, 187—, admitted to prosecute his suit in the said Court *in formâ pauperis*.

Your petitioner therefore most humbly prays, that your lordships will be pleased to order that he may be admitted to prosecute his said appeal *in formâ pauperis*.

And your petitioner will ever pray.

1633.
Affidavit of poverty (*p*).

A. B. maketh oath and saith, that on or about the —— day of ——, 187—, he intends to offer for presentation to the House of Lords a petition of appeal: complaining of (*State what: see ante*, No. 1632).

That the said A. B. is very poor, and is not worth in all the world the sum of five pounds in lands, tenements, goods, or chattels: his wearing apparel, and the subject matter of the said appeal only excepted; and is, by reason of such his poverty, unable to prosecute the said appeal.

Sworn before me, at——, in the (county) of ——, this —— day of ——, 187—. } A. B.

(*Signature of person before whom affidavit sworn, and style of office.*)

1634.
Certificate of poverty (*q*).

We, the undersigned, do hereby certify that A. B., of (*residence and addition*), in the above written affidavit named, is a very poor person.

Dated this —— day of ——, 187—.

C. D., Minister of the parish [*or as may be*] of ——, in the (county) of ——.
E. F. } Churchwardens of the said parish
G. H. } [*or as may be*], of ——.

(*p*) See Dan. Pr. 1361.

(*q*) This certificate must be signed by the minister and churchwardens of the parish in which the person resides: see Dan. Pr. 1361.

1635.
Order for respondents to answer (*r*).

(*Date*)—Upon reading the petition and appeal of D. P., of, *&c.*, complaining of an order of the Lords Justices of the Court of Appeal in Chancery of the —— day of ——, so far as it was declared that, *&c.*; and praying that, *&c.*: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the said L. M. T., *&c.*, may have a copy of the said appeal; and do put in their answer, or respective answers, thereunto in writing, on or before ——, the —— day of ——, 187—; and service of this order upon the solicitors of the said respondents shall be deemed good service.

1636.
Affidavit of service of order to answer (*s*).

Title: as in No. 1632, *ante.*

E. F., of (*residence and addition*), maketh oath and saith, that he did on the —— day of ——, 187—, serve the within order of appeal upon C. D., the respondent within named [*Or*, upon G. H., of (*Place of business*), the solicitor for C. D., the respondent within named], by delivering to, and leaving with the said C. D. [*Or*, G. H.] a true copy of the said order; and at the same time showing to him the said original order.

Sworn (*&c.*: *see ante*, No. 1633).

1637.
Petition for further time to answer (*t*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the respondent.

Showeth:

That the appellant presented his petition of appeal on the —— day of ——, 187—: complaining of (*State what: see ante*, No. 1632).

That on the —— day of ——, 187—, an order was made by your lordships, whereby your petitioner was ordered to put in his answer to the said appeal on or before the —— day of ——, 187—.

(*r*) *Duke of Portland* v. *Topham*, H. L. 1 July, 1863; and see Dan. Pr. 1362.

(*s*) See Dan. Pr. 1362. The affidavit is indorsed on the original order: Macq. 166; Palmer, 25; and it may be sworn before a commissioner to administer oaths in Chancery: Dan. Pr. 1362. As to service of the order, see Dan. Pr. 1362. As to the time allowed to answer, and as to obtaining a peremptory order to answer, and hearing an appeal *ex parte* in default of answer, see Stand. Ord. H. L. No. CIX. 15 Jan. 1719; No. CXI., 28 Mar. 1735; Dan. Pr. 1363, 1365; Macq. 167, 777, 778.

(*t*) Dan. Pr. 1364. Petitions for an extension of time are written on foolscap paper, bookwise; and are lodged with the Clerk of Appeals. Unless consented to by the agent of the opposite party, such petitions are referred to the Committee of Appeals: who are attended thereon by the agents of the parties: *ib.*

That your petitioner has been unable to complete his answer to the said appeal by the time limited by the said order.

Your petitioner therefore humbly prays, that your lordships will be pleased to grant him —— days further time to put in his said answer.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*u*).

1638.

Notice of intention to present a petition for an extension of time to answer, or the like (*x*).

The petition of which the within is a copy is intended to be presented to the House of Lords on ——, the —— day of ——, 187—, or as soon after as may be. Dated this —— day of ——, 187—.

A. B., Agent for the petitioner.

1639.

Consent to a petition (*y*).

I consent to the prayer of the above petition.

A. B., Agent for the appellant [*Or*, for the respondent C. D.—*Or*, for all the respondents].

1640.

Joint and several answer of respondents (*z*).

The joint and several answer of L. M. T., W. T., and J. J., three of the respondents to the petition and appeal of D. P., appellant.

The above named respondents, not confessing or acknowledging all or any of the matters and things in the said petition and appeal mentioned to be true as the same are therein set forth, and reserving to themselves all benefit and advantage of exceptions to the errors, defects, and imperfections in the said appeal contained: for answer thereunto say, they admit that the Court of Chancery did make such decrees or orders as in the said petition and appeal are mentioned, and complained of; but as to the dates and contents of such decrees or orders the respondents do, for greater certainty, refer to the said decrees or orders when the same shall be produced; but the respondents are advised that the said decrees or orders are agreeable to equity and justice; and they humbly submit that the same ought to be affirmed, and the said petition and appeal dismissed with costs.

(*u*) For form of consent of the appellant's agent, see *post*, 1639.

(*x*) See Dan. Pr. 1364; Palmer, 40. The notice is usually indorsed on, and served with, a copy of the petition.

(*y*) A consent to a petition is written at the foot of the prayer of the petition, and signed by the agent of the party consenting. As to consents, see Dan. Pr. 1364.

(*z*) *Duke of Portland* v. *Topham*, H. L. 16 Feb. 1864; and see *post*, No.

1641.
Petition of the appellant, for further time to lodge case (*a*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the appellant.

Showeth:

That the petitioner presented his petition of appeal on the —— day of ——, 187—: complaining of (*State what: see ante*, No. 1632).

That the time allowed by your lordships' Standing Orders for lodging the petitioner's printed case will expire on the —— day of ——, 187—.

That owing to the difficulty and importance of your petitioner's case, his solicitors have not yet been able to get the same fully settled.

Your petitioner therefore humbly prays, that your lordships will be pleased to grant —— days further time to lodge his case.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*b*).

1642.
Petition of the appellant, for further time to lodge case, after order extending time (*a*).

Proceed as in No. 1641, *ante, to end of par.* 1.

That on the —— day of ——, 187—, an order was made by your lordships, whereby the time for lodging the appellant's case was extended until the —— day of ——, 187—.

That your petitioner has made every exertion to have his case lodged within the extended time allowed by your lordships; but owing to the difficulty of the case, and the care and consideration requisite to be given to it by his counsel, your petitioner has been unable to have it completed within such extended time.

Your petitioner (*&c.: Conclude as in* No. 1641, *ante*).

1643.
Petition of the appellant, to restore appeal, and extend time to lodge case (*a*).

Proceed as in No. 1641, *ante, to end of par.* 1.

That the time for laying the prints of your petitioner's case upon the table of your lordships' House expired on the —— day of ——, 187—.

That your petitioner, from inadvertence, miscalculated the time for lodging his case: and your petitioner is informed that, in con-

1653; and Dan. Pr. 1364. The answer is engrossed on parchment, and lodged with the Clerk of the Parliaments: *ib.*; and see Stand. Ord. H. L. No. CX., 29 Mar. 1720; Macq. 163, 777.

(*a*) As to the time allowed to lodge cases, and mode of obtaining an extension of time, see Dan. Pr. 1369; Stand. Ord. H. L. No. CIII., 24 Mar. 1725: amended 28 Feb. 1764; No. CXVI., 12 July, 1811: amended 22 June, 1829; Macq. 182, 779.

(*b*) For form of consent of the respondent's agent, see *ante*, No. 1639.

sequence of his case not being lodged within the time so limited, your petitioner's appeal stands dismissed.

Your petitioner therefore humbly prays, that your lordships will be pleased to order that his appeal may be restored, and that the time for lodging his printed case may be extended for —— days.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*c*).

1644.

Petition of the respondent, for leave to lodge case (*d*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the respondent.

Showeth:

That the appellant presented his petition of appeal on the —— day of ——, 187—.

That your petitioner has answered the said appeal.

That the time allowed by your lordships' Standing Orders for lodging the petitioner's printed case has expired; but such case is now printed, and ready to be lodged.

Your petitioner therefore humbly prays, that he may be allowed now to deliver in his printed case.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*e*).

1645.

Formal parts of a case (*f*).

In the House of Lords.

On an Appeal from the High Court of Chancery in England.

Between (*Set out the names of all the appellants*), . . Appellants.

and

(*Set out the names of all the respondents*), . Respondents.

THE CASE OF THE APPELLANTS [*Or*, RESPONDENTS].

(*The case should contain all the material facts; and should concisely narrate the proceedings, and the substance of the pleadings and evidence or proofs: whether consisting of documents or depositions; and particularly those on behalf of the party whose case it is* (*g*). *The case usually concludes to the following effect:*)

(*c*) For form of consent of the respondent's agent, see *ante*, No. 1639.

(*d*) See *ante*, No. 1641, n. (*a*).

(*e*) For form of consent of the appellant's agent, see *ante*, No. 1639.

(*f*) See Dan. Pr. 1367; Stand. Ord. No. CXVIII., 24 Feb. 1813; Macq. 780. In printing the case and appendix, the lines on each page of the print are divided into portions of five each, by the letters A. B. C. D., &c., in the inner margin: A being placed opposite the fifth line. For directions as to correcting proof sheets, see *ante*, No. 195.

(*g*) See Dan. Pr. 1367. In the margin of the case, opposite the respective statements, a reference must be inserted to the page of the appendix where the documents relating thereto may be found; as thus: "Appendix, p. 26": see *ib.*

The appellants are advised, and humbly submit, that the said decree [*Or*, order] of the —— day of ——, 187—, is erroneous [*Or*, except so far as it ordered, *&c.*, is erroneous], and ought to be reversed, or varied ; and the appellant has appealed therefrom to this most Honourable House

Or, in the respondent's case : The respondent is advised, and humbly submits, that the said decree [*Or*, order] of the —— day of ——, 187—, is right ; and that the same ought to be affirmed

for, amongst others, the following

REASONS.

1. }
2. } (*State the reasons.*)
3. }

(*Signatures of counsel* (*h*).)

1646.
Formal parts of an appendix (*i*).

Title of the appeal: as in No. 1645, *ante.*

APPENDIX TO THE CASE OF THE APPELLANTS [*Or*, RESPONDENTS—*Or*, JOINT APPENDIX TO THE CASES OF THE APPELLANTS, AND OF THE RESPONDENTS—*or as may be*].

(*Set out the documents : as in the following scheme* (*j*)) :

I. *The Pleadings :*

1. Bill filed by the appellants against the respondents on the ——, 187— : as amended on the ——, 187—, pursuant to order dated the ——, 187—.
2. The answer of the respondents filed ——, 187—, to the original bill.
3. The answer of the respondents filed ——, 187—, to the amended bill.

II. *The Appellants' Evidence by affidavit, and orally :*

4. Affidavit of A. B., of, *&c.*, filed ——, 187—.

(*h*) As to the signatures to the case, see Dan. Pr. 1368 ; Stand. Ord. H. L. No. CXIV., 19 April, 1698 ; Macq. 184, 776.

(*i*) See Dan. Pr. 1368. As to the evidence upon appeals, see Dan. Pr. 1367, 1368 ; and as to the production of documents at the hearing, *ib.* 1368.

(*j*) The order in which the documents should be printed in the appendix will depend upon the circumstances of the particular case. The scheme set out in No. 1646 is suggested as a convenient arrangement. The appendix should be preceded by an index of its contents : in which should be set forth a short description of each document, and the page where it can be found ; as thus : "Amended bill of the appellants, 1" ; "Answer of the respondents to the original bill, 8." The appendix must be paged throughout ; and each document should be concisely described : either in the heading, or in a marginal note opposite the commencement. Where a document extends over more than one page of the appendix, its short description should be repeated, in a corner note, at the top of the next and any continuous pages.

5. Cross-examination of the said A. B. thereon, on behalf of the respondents: taken ——, 187—, and filed ——, 187—.
6. Deposition of C. D., of, *&c.*, taken ——, 187—, and filed ——, 187—.

III. *The Respondents' Evidence by affidavit, and orally:*
7. Affidavit (*&c.: as above*).

IV. *Documentary Evidence:*
8. Admissions in the cause.
9. Exhibit A.: Indenture of settlement dated ——, 187—.
10. Exhibit B.: Letter from E. F. to G. H., dated ——, 187—.

V. *The decree appealed from:*
11. Decree of the Lord Chancellor [*or as may be*], dated ——, 187—.
12. Short hand writer's notes of his lordship's judgment.

1647.

Indorsement on bound copies for the House (*k*).

In the House of Lords.
On Appeal from the High Court of Chancery in England.

A. B., and others . . . . . Appellants.
C. D., and others . . . . . Respondents.

CASE OF THE APPELLANTS.
CASE OF THE RESPONDENTS.
AND
JOINT APPENDIX THERETO.

E. & F.,
of, *&c.*
Appellants' agents.

(*k*) One hundred copies of each case, and of each appendix, or of the joint appendix, must be lodged with the Clerk of Appeals. Six copies of each case and appendix, bound, and interleaved with cream wove paper, must be subsequently left at the House, for the use of the lords who are to hear the appeal; and if the Judges are summoned, six more copies, bound and interleaved in like manner, must also be left at the House for their use. Each bound copy left at the House must be labelled or indorsed on the cover: stating the title of the appeal. Where the hearing in the Court below is reported, a note of reference to the report should be made on the first page of each bound copy left at the House: Dan. Pr. 1368, 1369. As to the exchange of cases, see *ib.* 1369.

1648.

Case of formal respondents: referring to the case of the principal respondent (*l*).

Title: as in No. 1645, *ante*.

CASE OF THE RESPONDENTS W. T. AND J. J.

The orders from which this appeal is brought relate to divers funds, to which the above named respondent L. M. T. has been declared to be entitled for her separate use.

The respondent W. T. is the husband of the said L. M. T. The respondent J. J. is the sole surviving trustee of the settlement made on the marriage of the said W. T. with the said L. M. T.: by which all the property of the said L. M. T. is settled upon trusts under which she is entitled thereto for her separate use.

The bill in the said cause was filed by the said L. M. T., by J. T. her next friend. The said W. T. and J. J. are two of the defendants thereto; but they have taken no active part in the proceedings in the said suit.

The facts of the case, and proceedings in the suit, and the orders of the Lords Justices from which this appeal is brought, are fully stated in the case of the respondent L. M. T.; and as the respondents W. T., and J. J., are formal parties only to the said suit, they crave leave, in order to save expense, to refer to the said case of the said L. M. T. And they are advised, and humbly submit, that the orders appealed against are right, and ought to be affirmed, under the circumstances, and for the reasons, in the said case appearing.

(*Signatures of counsel.*)

1649.

Motion paper, to set down appeal for hearing (*m*).

A. B., ... Appellant.
C. D., ... Respondent.

The respondent having put in his answer to this appeal [*or as may be*], May it please your lordship to move that this cause may be set down for hearing after the causes already appointed.

(*l*) *Duke of Portland* v. *Topham*, H. L., 1864; and see Dan. Pr. 1371, n. (*h*).

(*m*) See Dan. Pr. 1367; Macq. 163. The motion paper is filled up at the Parliament Office. As to setting down and hearing an appeal *ex parte*, see Dan. Pr. 1363, 1369. As to applications to advance the hearing of an appeal, or alter the day appointed, see Dan. Pr. 1367, 1369; Stand. Ord. H. L. No. CXXI., 22 Dec. 1703. As to the dismissal of appeals for want of prosecution, see Dan. Pr. 1365; Stand. Ord. H. L. Nos. CXII., CXIII., 29 Mar. 1720; Macq. 168, 169, 777. As to the hearing and decision of appeals, see Stand. Ord. H. L. No. CXXVII., 2 Mar. 1727; Dan. Pr. 1371; Macq. 778. As to the number of counsel allowed on taxation, see Dan. Pr. 1370. As to default at the hearing, see *ib.* The brief of each counsel will consist of printed copies of the case on each side, and of the appendix or appendices; and should be accompanied by such observations as may be deemed material. The whole are frequently bound together for the convenience of counsel: Dan. Pr. 1368, n. (*i*).

1650.

Joint petition, for leave to lodge joint appendix (*n*).

Title, and address: as in No. 1632, *ante.*

The joint petition of the appellants and respondents [*or as may be*].

Humbly showeth:

That your petitioners refer in their printed cases to the same documents.

That it will be a great saving of expense if such documents are printed in the form of a joint appendix.

Your petitioners therefore humbly pray, that they may be allowed to lodge a joint appendix to their respective cases.

And your petitioners will ever pray.

A. B., Agent for the appellants.
C. D., Agent for the respondents.

1651.

Petition of the respondent, for leave to lodge case, and to refer to appendix to appellant's case, by consent (*n*).

Proceed as in No. 1644, *ante, to* lodged.

That the appellant has lodged an appendix to his case.

That your petitioner refers in his printed case to the same documents as are referred to by the appellant in his case, or to certain of such documents.

That it will be a great saving of expense if your petitioner is allowed to refer to the appendix lodged by the appellant.

Your petitioner therefore humbly prays, that he may be allowed now to deliver in his printed case; and to refer to the appendix to the appellant's case.

And your petitioner will ever pray.

A. B., Agent for the respondent (*o*).

1652.

Petition for leave to amend petition of appeal, and lodge supplemental case (*p*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the appellant.

Showeth:

That your petitioner on the 1st day of July, 1863 (*q*), presented to your lordships his petition and appeal: complaining of an order made by the Lords Justices of the Court of Appeal in Chancery, dated the 2nd day of May, 1863.

That your petitioner has duly lodged his case and appendix in support of such appeal; and has set down his said petition and appeal for hearing.

That since lodging the said case and appendix, a further order has been made by the Lords Justices, dated the 5th day of

(*n*) See Dan. Pr. 1368.

(*o*) For form of consent of the appellant's agent, see *ante*, No. 1639.

(*p*) *Duke of Portland* v. *Topham*, H. L. 1864. As to the amendment of petitions of appeal, and as to supplemental cases, see Dan. Pr. 1365, 1366, 1370.

(*q*) See *ante*, No. 1628.

December, 1863, touching, amongst other things, the payment of the costs reserved by the said order of the 2nd day of May, 1863.

That your petitioner is advised to appeal to your lordships against the said order of the 5th day of December, 1863; and is therefore desirous of amending his said petition of appeal, by including therein the said order of the Lords Justices dated the 5th day of December, 1863.

Your petitioner therefore humbly prays, that your lordships will be pleased to grant to your petitioner leave to amend his said petition of appeal, by including therein the said order of the 5th day of December, 1863; and that your petitioner may have leave to lodge a supplemental case relative to such amendment.

And your petitioner will ever pray.

A. B., Agent for the petitioner.

1653.

Petition for leave to withdraw joint answer, and put in another answer: in consequence of amendment of petition of appeal, since answer (*r*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the respondents L. M. T., *&c.*

Showeth:

That the appellant presented his petition of appeal on the 1st day of July, 1863 (*s*): complaining of an order of the Lords Justices of the Court of Appeal in Chancery dated the 2nd day of May, 1863.

That your petitioners filed their joint and several answer to the said petition on the 16th day of February, 1864 (*t*).

That since the presentation of the said petition of appeal the Lords Justices have made a further order dated the 5th day of December, 1863, disposing of the payment of the costs reserved by the said order of the 2nd day of May, 1863, and of other matters therein mentioned; and the appellant has since amended the said petition of appeal with leave of your lordships' Right Honourable House (*u*), and appealed against the said order of the 5th day of December, 1863.

That, in consequence thereof, your petitioners are desirous of withdrawing their answer so filed by them; and, in lieu thereof, to put in such other answer or answers to the said petition of appeal, as now amended, as they may be advised, and as will meet the present circumstances of the case.

That in consequence of such amendments having been made by the appellant, your petitioners have delayed lodging their printed

(*r*) *Duke of Portland* v. *Topham*, H. L. 1864.
(*s*) See *ante*, No. 1628.
(*t*) *Ibid.*, 1640.
(*u*) *Ibid.*, 1652

cases according to the rules of your lordships' Right Honourable House; but the same are now ready to be lodged.

Your petitioners therefore humbly pray your lordships, that they may be at liberty to withdraw their joint and several answer to this appeal; and in lieu thereof to lodge such other answer or answers as your petitioners may be advised; and that your petitioners may also be at liberty to lodge their printed cases on this appeal.

And your petitioners will ever pray.

A. B., Agent for the petitioners.

1654.

Petition for leave to withdraw separate appendix, and to lodge amended and joint appendix instead thereof (*x*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the appellant, and of the respondents L. M. T., *&c.*

Showeth:

That your petitioner, the appellant, on, *&c.*, presented to your lordships his petition and appeal (*y*): complaining of an order made by the Lords Justices of the Court of Appeal in Chancery, dated the 2nd day of May, 1863.

That your petitioner, the appellant, has duly lodged his case and appendix in support of such appeal; and has set down his said petition and appeal for hearing.

That since lodging his said case and appendix, a further order has been made in the cause by the Lords Justices, dated the 5th day of December, 1863; and which it has been found necessary to lay before your lordships, with other documents relating to the said petition and appeal.

That the cases of your petitioners, the respondents, will also refer to the several cases and documents referred to by the appellant in his printed case.

Your petitioners therefore humbly pray your lordships, that the appellant may be allowed to withdraw his appendix already lodged; and instead thereof to lodge an amended appendix, as a joint appendix to the respective cases of your petitioners, the appellant and respondents.

And your petitioners (*Conclude as in* No. 1650, *ante*).

1655.

Cross petition of appeal, and answer thereto (*z*).

The same as Nos. 1628, and 1640, *ante.*

(*x*) *Duke of Portland* v. *Topham*, H. L. 1864.

(*y*) See *ante*, No. 1628.

(*z*) As to cross appeals, see Stand. Ord. H. L. No. CIV., 8 March, 1763; amended 22 June, 1829; Dan. Pr. 1364, 1365; Macq. 226, 227, 779. As to the costs of cross appeals, see Morgan & Davey, 103.

1656.
Petition for leave to use appendix lodged in a cross appeal (*a*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the appellant, D. P., and of the respondents L. M. T. and L. H. B.

Showeth:

That your petitioner D. P., on, *&c.*, presented to your lordships his petition and appeal (*b*): complaining of an order made by the Lords Justices of the Court of Appeal in Chancery, dated the 2nd day of May, 1863.

That there is another appeal now pending before your lordships by H. B., against your petitioners, and others, complaining of the said order.

That the documents set out in the joint appendix to the case lodged by the said H. B. to her said petition and appeal are identical with those intended to be used and referred to by your petitioners on the hearing of the said petition and appeal of your petitioner D. P.; and it will be a saving of expense to your petitioners, and an advantage to your lordships' house, for your petitioners to refer to, and use, on the hearing of their said petition and appeal, the joint appendix so lodged by the said H. B.

Your petitioners therefore humbly pray your lordships, that they may be at liberty to refer to, and use, the said joint appendix of the said H. B., on the hearing of the aforesaid petitions and appeals before your lordships.

And your petitioners will ever pray.

A. B., Agent for the petitioners.

1657.
Petition for leave to revive appeal, on death of appellant (*c*).

Title, and address: as in No. 1632, *ante.*

The humble petition of A. B., of (*residence and addition*), and C. D., of, *&c.*

Showeth:

That on the —— day of ——, 187—, E. F., the appellant above named, presented his petition of appeal to your lordships: complaining of (*State what: see ante*, No. 1632).

That the respondent filed his answer to the said appeal; and subsequently the respective cases of the appellant and respondent were duly lodged, and the cause was set down for hearing before your lordships.

That the said E. F. departed this life on or about the —— day of ——, 187—: having first duly made and published his last will and testament in writing, whereby he appointed your petitioners executors thereof: who duly proved the same in Her Majesty's Court of Probate on the —— day of ——, 187—; and

(*a*) See *Duke of Portland* v. *Topham*, H. L., 1864.

(*b*) See *ante*, No. 1628.

(*c*) As to abatement and revivor of appeals, and adding new parties, and as to supplemental cases thereupon, see Stand. Ord. H. L. No. CXX., 20 Mar. 1823; Dan. Pr. 1369, 1370; Macq. 241, 781.

that your petitioners are now the legal personal representatives of the said E. F. deceased.

That your petitioners are advised and believe that by the death of the said E. F. the said appeal has become abated.

That on the —— day of ——, 187—, an order was made by the High Court of Chancery that the said cause should stand revived at the suit of your petitioners against all the defendants [*or as may be*], and be in the same plight and condition as the same was in at the time of the said abatement; and a copy of the said order is annexed to this petition.

Your petitioners therefore humbly pray your lordships, that this appeal may stand revived in your lordships' House, in the name of the petitioners, in the place and stead of the said late E. F., and be in the same plight and condition as the same was in at the time of the said abatement.

And your petitioners will ever pray.

A. B.
C. D.
G. H., Agent for the petitioners (*d*).

1658.

Petition of the appellant, for leave to withdraw appeal, on payment of the respondent's costs: the respondent consenting (*e*).

Title, and address: as in No. 1632, *ante.*

The humble petition of the appellant.

Showeth:

That on the —— day of ——, 187—, the appellant presented his petition and appeal to your lordships: complaining of (*State what: see ante*, No. 1632).

That the respondent filed his answer to the said appeal; and the same has been set down for hearing before your lordships.

That the appellant now proposes to withdraw the said appeal: paying to the respondent the costs incurred by him, as they shall be taxed.

May it therefore please your lordships to permit the appellant to withdraw his said appeal: he paying to the respondent his costs in the said appeal, as the same shall be taxed by the proper officer of your lordships' House.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*f*).

(*d*) The petition must be signed by the petitioners and their agent. For form of consent of the respondent's agent, see *ante*, No. 1639.

(*e*) As to withdrawing appeals, see Dan. Pr. 1866; and as to petitions to dismiss appeals improperly brought, see *ib.*

(*f*) For form of consent of the respondent's agent, see *ante*, No. 1639.

1659.
Petition of the appellant, for leave to withdraw appeal, without costs, by consent (*g*).

Proceed as in No. 1658, *ante, to the end of par.* 1.

That the respondent having filed his answer to the said appeal, and the petitioner and respondent having lodged their printed cases, the said appeal was set down for hearing before your lordships.

That it has since been agreed between your petitioner and the respondent that the said appeal shall be withdrawn: each party paying the expenses respectively incurred by them in the said appeal.

Your petitioner therefore humbly prays your lordships, that the said appeal may be withdrawn accordingly, without costs; or that your lordships will do otherwise in the premises, as to your lordships shall seem meet.

And your petitioner will ever pray.

A. B., Agent for the petitioner (*h*).

1660.
Motion paper, to make an order of the House an order of the Court of Chancery (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the order of the House of Lords, dated the ——, 187—, on the petition and appeal of the defendant [*or as may be*], from the decree in this cause, dated the ——, 187—, may be made an order of this Court.

The order accompanies.

1661.
Bill of costs of the Appellants (*j*).

Title—as in No. 1632, *ante.*

The Appellants' Bill of Costs.

Session, 187—.

	£	*s.*	*d.*
January, 187—: Attending the appellants, and discussing with them the effect of the judgment of the Court below, and taking their instructions to appeal to the House of Lords: agent's retaining fee . .	2	2	0

(*g*) See Dan. Pr. 1366.

(*h*) For form of consent of the respondent's agent, see *ante,* No. 1639.

(*i*) See Dan. Pr. 1372. For order in like case, see *Walford* v. *Walford,* V. C. M., for V. C. S., 30 July, 1870, Reg. Lib. B. 2249; and see Seton, 1160. As to the course, where special directions are necessary, see Dan. Pr. 1372.

(*j*) This and No. 1662, *post,* are printed from Forms obtained at the Office for the sale of Parliamentary Papers; and see W. N. (1868), Pt. II. 363. It appears by a note on the Forms, that these Forms have been prepared from taxed bills, by the direction of the Clerk of the Parliaments, and are intended as a guide to Parliamentary Agents having the conduct of appeal cases in the House of Lords. As to the costs of appeals, and the mode of enforcing payment thereof, see Dan. Pr. 1373—1375; Stand. Ord. H. L. No. CXXXVIII., 3 April, 1835; Morgan & Davey, 96—104; and for a scale of charges, and

	£	s.	d.
Instructions for petition of appeal (*k*)	0	13	4
Drawing same: — folios, at 2*s.* per folio.			
Fair copy for Mr. A. (counsel) to settle and sign: — folios at 8*d.*			
Attending him therewith	0	13	4
Paid his fee for settling and signing (*l*)	5	15	6
Fair copy of petition of appeal for Mr. B. (counsel) to settle and sign			
Attending him therewith	0	13	4
Paid his fee for settling and signing	5	15	6
Drawing notice of intention to appeal (*m*); copy, and service on respondents' agent	0	10	0
Engrossing petition of appeal for presentation: — folios at 1*s.* per folio			
Paid for parchment: — skins at 5*s.* per skin			
Drawing certificate of service of notice of intention to appeal (*n*)			
Engrossing same on the petition of appeal			
Attending at the House, petition of appeal presented, and an order made for respondents to put in their answer in four weeks (*o*)	1	1	0
Paid fee on presentation of petition			
Attending the appellants, and arranging as to the recognizance to be entered into on the appeal	0	13	4
Attending at the Parliament Office, and arranging for the recognizance to be taken on the —— next (*p*)	0	13	4
Attending appointment accordingly, and recognizance duly entered into	1	11	6
Drawing and engrossing affidavit of service of order upon the respondents' agent (*q*)	0	13	4
Attending swearing	0	6	8
Paid oath	0	1	6
Drawing retainer and copy for Mr. A. (counsel)	0	6	8
Attending him	0	13	4
Paid his fee, and clerk	2	7	0
Drawing retainer and copy for Mr. B. (counsel)	0	6	8
Attending him	0	13	4
Paid his fee, and clerk	2	7	0
Instructions for appellants' case (*r*)	2	2	0
Drawing same: — folios, at 2*s.* per folio			

forms of bills, see Webster's Parl. Costs, 224, 226, 228. For form of request to Taxing Officer of House of Lords to tax a bill of costs claimed in Chancery for business done in Parliament, see *ante*, No. 1305.

(*k*) See *ante*, No. 1628.
(*l*) *Ibid.*, 1629.
(*m*) *Ibid.*, 1630.
(*n*) *Ibid.*, 1631.
(*o*) *Ibid.*, 1635.
(*p*) As to the recognizance, see Dan. Pr. 1363.
(*q*) See *ante*, No 1636.
(*r*) *Ibid.*, 1645.

	£	s.	d.
Copy thereof for Mr. A. (counsel) to peruse and settle: — folios at 8*d.*			
Attending him therewith	0	13	4
Paid his fee (according to the length and importance of the case)			
Copy of case for Mr. B. (counsel) to peruse and settle: — folios at 8*d.*			
Attending him therewith	0	13	4
Paid his fee			
It being considered advisable that the case should be finally settled and signed in consultation, attending counsel severally fixing consultation	1	6	8
Paid Mr. A.'s consultation fee, and clerk	5	15	6
The like Mr. B.	5	15	6
Attending consultation, when case finally settled and signed	2	2	0
Making copy of case as finally settled for the printer: — folios, at 8*d.*			
Attending the printer therewith, and giving him instructions to print the same	0	13	4
Having received proof of appellants' case from the printer, examining and correcting same: — folios, at 2*d.* per folio			
Attending printer with revised proof, and instructing him to print off the usual number of copies.	0	13	4
Paid printer's account			
Attending paying same	0	6	8
Having received an intimation from the Parliament Office that in order to save expense parties should agree to have a joint appendix (*s*), attending the respondents' agent and making the suggestion, and handing him a list of the documents which the appellants proposed to insert in their appendix, which he promised to consider	0	13	4
Drawing, and copy of the list of documents (*s*) for the respondents' agent: — folios, at 1*s.* 4*d.* per folio.			
Attending respondents' agent, when he informed me that the respondents were disposed to have a joint appendix, and handed me a list of the documents (*s*) which they proposed should be inserted	0	13	4
Attending the respondents' agent and appointing —— next to meet with him and settle the documents to be printed in the joint appendix	0	13	4
Attending respondents' agent accordingly, and arranging the documents to be inserted in the joint appendix	1	6	8
Drawing appendix: — folios (half charge), 6*d* per folio			

(*s*) See *ante*, No. 1646.

	£	s.	d.
Fair copy for the printer: — folios (half charge), 4*d.* per folio			
Attending him therewith (half charge)	0	6	8
Examining and correcting proof: — folios, at 2*d.* per folio			
Attending printer therewith, and instructing him	0	6	8
Paid printer's account (moiety)			
Attending paying same	0	6	8
Certain of the respondents not having put in their answer, drawing motion that they may be ordered to answer in a week (*t*)	0	13	4
Attending at the Parliament Office therewith	0	13	4
Attending the House, when the respondents were peremptorily ordered to answer in a week	1	1	0
Paid fee on order	1	1	0
Attending respondents' agents, exchanging cases	0	13	4
Attending Parliament Office, lodging case and appendix	1	1	0
Paid fee thereon			
Drawing motion to set down cause for hearing (*u*)	0	10	0
Attending House, when motion made	1	1	0
Paid fee thereon			
Making up sets of cases and appendices, to be bound for the use of the Law Lords and for counsel, and attending binder therewith and instructing him (*x*)	0	13	4
Paid binder's account			
Attending paying same	0	6	8
Attending Clerk of the Table, with bound cases for the use of the Law Lords	0	13	4
Attending Mr. A. with brief			
Paid his brief fee, and clerk (*y*)			
Attending Mr. B. with brief			
Paid his brief fee, and clerk (*y*)			
Attending the Parliament Office, when we received notice that this cause would be in the paper for hearing on —— next	0	13	4
Attending Mr. A., fixing consultation	0	13	4
Paid his fee, and clerk	5	15	6
Attending Mr. B., fixing consultation	0	13	4
Paid his fee, and clerk	5	15	6
Attending consultation	2	2	0
Attending at the bar of the House this day, when cause in part heard, and adjourned to —— next	5	5	0
Paid refresher fee to Mr. A., and clerk	11	0	6

(*t*) See *ante*, No. 1636, n. (*s*).

(*u*) *Ibid.*, 1649.

(*x*) *Ibid.*, 1647, n. (*k*).

(*y*) This fee is regulated according to the magnitude and importance of the case, and in all cases includes the first day's attendance.

	£	s.	d.
Attending paying same	0	13	4
Paid refresher fee to Mr. B., and clerk	11	0	6
Attending paying same	0	13	4
Attending at the bar of the House this day, when cause fully heard, and further consideration put off *sine die*	5	5	0
Paid bar fee and attendance	8	15	0
Paid Lord Chancellor's Purse-bearer	1	1	0
Paid cause list	1	1	0
Paid shorthand writer, attendance fee			
Attending at the Parliament Office, when we received notice that this cause would be in the paper for judgment on —— next	0	13	4
Attending Mr. A., informing him thereof	0	13	4
Paid refresher fee to hear judgment	11	0	6
Attending at the bar of the House this day, cause considered, and judgment of the court below reversed	3	3	0
Having received draft judgment from the Chief Clerk, perusing same, and making certain alterations therein	0	13	4
Attending respondents' agent with draft judgment as altered	0	13	4
Attending the Chief Clerk with draft of judgment settled and signed by the agents for both parties	0	13	4
Paid fee on judgment	3	3	0
Session fee	5	5	0
Cab hire, letters, and messengers (*z*)	3	3	0
	£		

1662.

Bill of costs of the Respondents (*a*).

Title as in No. 1632, *ante*.

The Respondents' Bill of Costs.

Session, 187—.

March, 187 :—Having received instructions from the respondents to attend to their interests in this appeal, agent's retaining fee	2	2	0
Having been served with notice of the presentation of the petition of appeal, and with copy of the order of the House made thereon, attending at the Parliament Office, and ordering copy of the petition of appeal (*b*)	0	13	4

(*z*) For the charges for drawing and taxing the bill of costs, see *post*, No. 1662.

(*a*) See *ante*, No. 1661, n. (*j*).

(*b*) *Ibid.*, 1628.

	£	s.	d.
Attending for and examining copy with the original .	0	13	4
Paid for office copy			
Instructions for answer (*c*)	0	13	4
Drawing and engrossing same	1	1	0
Paid for parchment	0	5	0
Attending Parliament Office filing answer . . .	0	13	4
Paid filing	0	5	0
Attending to ascertain if recognizance duly entered into, and found it was	0	13	4
Drawing retainer for Mr. A. (counsel) . . .	0	6	8
Attending retaining him	0	13	4
Paid his retaining fee, and clerk	2	7	0
Drawing retainer for Mr. B. (counsel)	0	6	8
Attending retaining him	0	13	4
Paid his retaining fee and clerk	2	7	0
Instructions for case (*d*)	2	2	0
Drawing same : — folios, at 2*s.* per folio. . . .			
Copy of case for Mr. A. to peruse and settle : — folios, at 8*d.*			
Paid his fee, and clerk (*e*)			
Attending paying same			
Copy of case for Mr. B. to peruse and settle . . .			
Paid his fee, and clerk			
Attending paying same			
Attending the appellants' agent : when he served me with notice (*f*) of his intention to present a petition for further time to lodge his case (*g*), perusing petition, and signing same as assenting thereto (*h*) [*Or*, refusing assent]	0	13	4
Attending the House, when prayer of petition complied with, and order made	1	1	0
Or, if attending before the Appeal Committee .	2	2	0
It being desired by counsel that the case should be settled and signed in consultation :—			
Attending Mr. A., fixing consultation	0	13	4
Paid his consultation fee, and clerk	5	15	6
The like attendance on Mr. B.	0	13	4
Paid his consultation fee, and clerk	5	15	6
Attending consultation with counsel, when case settled and signed	2	2	0
Making copy of case as finally settled for the printer : — folios, at 8*d.*			

(*c*) See *ante*, No. 1640.
(*d*) *Ibid.*, 1645.
(*e*) Regulated according to the magnitude and importance of the case.
(*f*) See *ante*, No. 1638.
(*g*) *Ibid.*, 1641.
(*h*) *Ibid.*, 1639.

	£	s.	d.
Attending him therewith, and instructing him as to printing	0	13	4
Having received proof case from the printer, examining and correcting same : — folios, at 2*d.* per folio			
Attending printer with corrected proof, and instructing him to print — copies	0	13	4
Attending the appellants' agent when he suggested to me that it would be desirable to have a joint appendix in order to save expense, and he handed me a list of the documents (*i*) which be desired to have printed on behalf of the appellants	0	13	4
Drawing and fair copy of a list of the documents (*i*) on behalf of the respondents : — folios at 1*s.* 4*d.* per folio			
Attending the appellants' agent with copy of list, and informing him that the respondents were disposed to join in appendix	0	13	4
Attending appellants' agent and fixing meeting with him to finally settle the lists on either side	0	13	4
Attending appellants' agent accordingly, and finally arranging the documents to be inserted in the joint appendix	1	6	8
Drawing joint appendix : — folios (half charge), at 6*d.* per folio			
Making copy for the printer : — folios (half charge), at 4*d.* per folio			
Attending him therewith (half charge)	0	6	8
Having received proof from the printer, examining and correcting same : — folios, at 2*d.* per folio			
Attending printer, returning corrected proof, and instructing him to strike off — copies	0	13	4
Paid printers' account			
Attending paying same	0	6	8
Attending appellants' agent, exchanging cases	0	13	4
Attending Parliament Office, lodging case and appendix	1	1	0
Paid fee on lodging same			
Making up sets of cases and appendices for the binder, for the use of the Law Lords and counsel (*j*), and attending the binder therewith	0	13	4
Paid binding same			
Attending the Clerk attending the Table, with bound copies for the use of the Law Lords	0	13	4
Attending Mr. A. with brief			
Paid his brief fee, and clerk (*k*).			

(*i*) See *ante*, No. 1646.

(*j*) *Ibid.*, 1647, n. (*k*).

(*k*) This fee is regulated according to the magnitude and importance of the case, and in all cases covers the first day's attendance.

	£	s.	d.
The like attendance on Mr. B.			
Paid his brief fee, and clerk			
Attending the Parliament Office, when we ascertained that this appeal would be in the paper for hearing on —— next	0	13	4
Attending Mr. A., fixing consultation	0	13	4
Paid his consultation fee, and clerk	5	15	6
The like attendance on Mr. B.	0	13	4
Paid his consultation fee, and clerk	5	15	6
Attending consultation	2	2	0
Attending at the bar of the House this day, when counsel were fully heard for the appellants, and the further hearing was adjourned until —— next	5	5	0
Paid Mr. A., refresher fee	11	0	6
Attending him	0	13	4
The like, Mr. B.	11	0	6
Attending him	0	13	4
Attending at the bar of the House this day, when counsel were fully heard for the respondents, and the further consideration of the cause adjourned *sine die*	5	5	0
Attending at the Parliament Office, when we received notice that this appeal would be in the paper for judgment on —— next	0	13	4
Attending Mr. A., informing him thereof	0	13	4
Paid refresher fee to hear judgment	11	0	6
Attending at the bar of the House this day, when judgment given, affirming the judgment of the court below, and dismissing this appeal with costs	3	3	0
Having received the draft judgment from the Chief Clerk, perusing and considering same, and making certain alterations therein	0	13	4
Attending the appellants' agent with draft judgment as altered, and settling same with him	0	13	4
Attending the Chief Clerk with draft judgment, as settled and signed by the agents for both parties	0	13	4
Paid the following House fees :—			
Bar and attendance fees £			
The Lord Chancellor's Purse-Bearer			
Cause list			
Judgment			
Session fee	5	5	0
Cab hire, letters, and messengers	3	3	0
Drawing this bill of costs, — folios, at 1*s.* per folio			
Copy thereof for the Taxing Officer of the House of Lords : — folios at 8*d.*			
Attending him therewith, and obtaining an appointment to tax	0	13	4

£ *s.* *d.*

Copy of bill of costs, and service thereof, together with notice of appointment to tax, upon appellants' agent . . . . . .
Attending taxing . . . . . .
Paid fees for taxing . . . . . .
Attending settling costs . . . . . .

£

1663.
Request that Taxing Officer will tax bill (*l*).

In the House of Lords.
Between A. B. . . . . Appellant.
C. D. . . . . Respondent.
Bill of costs of the appellant [*Or*, respondent].
Appellant's agent: Mr. E. F., of (*Address*).
Respondent's agent: Mr. G. H., of (*Address*).
I request that an appointment may be given to examine and tax this bill. Dated this —— day of ——, 187—.
E. F., Agent for the appellant [*Or*, respondent].

(*l*) When costs relating to appeal cases are taxed under an order or judgment of the House of Lords, a copy of such costs: with the title of the cause to which it relates, and the names of the agents for the respective parties (appellants and respondents) endorsed thereon, and a request that an appointment may be given to examine and tax: must be deposited in the Taxing Office of the House of Lords; and due notice of an appointment to tax the same will be sent from the Taxing Office to each party: Dan. Pr. 1375.

CHAPTER XXXIII.

REVIVOR AND SUPPLEMENT (*a*).

SECTION I.—ORDERS OF REVIVOR, AND SUPPLEMENTAL ORDERS, UNDER 15 & 16 VIC. C. 86, S. 52 (*b*).

1664.

Common forms of allegations on motion of course, or on petition of course, for an order of revivor, or supplemental order (*c*).

Bankruptcy.—On the —— day of ——, 187—, the plaintiff [*or as may be*] was adjudicated a bankrupt; and A. B. has been appointed, and is now, the creditors' assignee of his estate and effects under the said bankruptcy.

Or, and A. B. has been appointed, and is now, the official assignee of his estate and effects under the said bankruptcy: but no creditors' assignee has yet been appointed.

Or, and A. B. has been appointed, and is now, the trustee of the property of the said plaintiff [*or as may be*].

Bankruptcy: Petition for arrangement.—On the —— day of ——, 18—, the plaintiff [*or as may be*] presented a petition to the (London) Bankruptcy Court for the liquidation of his affairs by arrangement; and A. B. has been appointed, and is

(*a*) See Dan. Pr. 1377—1401; Pemberton on Revivor and Supplement, *passim*.

(*b*) For the cases and practice under section 52, see Dan. Pr. 1379, *et seq.*; Pemberton, 108—151; and see note to No. 1665, *post*. As to the entry of the order at the Record and Writ Clerks' office, see Dan. Pr. 1384; and as to the alteration of the title of the cause, see *ib.* As to the right to revive, see Dan. Pr. 1377, *et seq.*; Pemberton, 75—84. As to revivor for costs, see Dan. Pr. 1387, 1388; Pemberton, 101—107; and see The Attorneys and Solicitors Act, 1870 (33 & 34 Vic. c. 28), s. 19: Dan. Pr. 1388. As to the effect of revivor by defendant upon the right to the conduct of the suit or proceedings, see Dan. Pr. 1379; Pemberton, 80—84. As to applications in the suit, notwithstanding an abatement, see Dan. Pr. 1390, 1391.

(*c*) Dan. Pr. 1379. The allegations in support of the order will usually be sufficient, if they commence with a statement of the last material proceeding or decretal order in the suit: followed by a short statement of the particular event causing the abatement, and the consequent devolution of interest; in those cases, however, where the right to revive will depend upon the nature of the suit, the objects of the suit should be shortly stated, and these allegations must be introduced in the order: Pemberton, 111.

now, the trustee of his estate and effects under the said liquidation.

Bankruptcy: Appointment of new assignee, or trustee.—E. F. has been appointed, and is now, the official [*Or*, creditors'] assignee of the estate and effects

Or, the trustee of the property

of the said A. B., in lieu of the said C. D.

Death.—On the —— day of ——, 187—, the plaintiff [*or as may be*] died.

Decree.—A decree, dated the —— day of ——, 187—, was made in this cause: whereby certain accounts and inquiries were directed to be taken and made; and which accounts and inquiries are now in course of prosecution.

Chief Clerk's Certificate.—The Chief Clerk, on the —— day of ——, 187—, made his certificate of the result of the said accounts and inquiries: which certificate was approved by the Judge, and was filed on the —— day of ——, 187—.

Heirship.—The said plaintiff [*or as may be*] left A. B. his heir at law.

Or, his heir according to the custom of the manor of C., whereof the hereditaments in the pleadings mentioned are holden.

Letters of administration.—On the —— day of ——, 187—, letters of administration of the personal estate of the said A. B. were granted by Her Majesty's Court of Probate (Principal Registry—*or as may be*) to C. D.: whereby he became, and is now, the legal personal representative of the said A. B.

Lunacy, and appointment of committee.—On the —— day of ——, 187—, the plaintiff [*or as may be*] was found lunatic by inquisition [*or as may be*]; and C. D. has been appointed, and is now, the committee of his estate.

Lunacy: Appointment of new committee.—On the —— day of ——, 187—, E. F. was appointed, and is now, the committee of the estate of the said A. B., in lieu of the said C. D.

Marriage of female plaintiff.—On the —— day of ——, 187—, the plaintiff A. B. intermarried with, and she is now the wife of, C. D., of, *&c.*

Marriage settlement.—By an indenture dated the —— day of ——, 187—, executed on the said marriage, and made between, *&c.*, all the share and interest of the plaintiff [*or as may be*] in the subject matter of this suit has been assigned to E. F. and G. H., upon certain trusts thereby declared thereof.

Order of revivor, or supplemental order.—By an order dated the —— day of ——, 187—, it was ordered that, *&c.*

Order on further consideration.—On the —— day of ——, 187—, an order was made at the hearing on further consideration of this

cause ; and thereby certain directions were given ; and the further consideration of this cause was adjourned.

Probate.—The said A. B., by his last will dated the —— day of ——, 187—, appointed C. D., and E. F., executors thereof. On the —— day of ——, 187—, the said will was proved by the said C. D., and E. F., in Her Majesty's Court of Probate (Principal Registry—*or as may be*) : whereby they became, and are now, the legal personal representatives of the said A. B.

1665.

General form of motion paper for order of revivor, or supplemental order (*d*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for an order of revivor [*Or*, supplemental order], upon the within allegations.

(*d*) See Dan. Pr. 1379. As to the allegations to be used, and the form of order required, see *ante*, No. 1664; and *post*, No. 1666. Unless there are special circumstances, the motion is not mentioned to the Court ; but the brief must be entered by the Registrar in Court : Pemberton, 111. For forms and precedents of orders of revivor, and supplemental orders, and cases relative thereto, see as under :—

By personal representative, heir at law, or devisee of sole plaintiff : *Richmond* v. *Richmond*, V. C. M. 14 Nov. 1870, Reg. Lib. B. 2769 ; Pemberton, 116 ; and see Dan. Pr. 1377, 1381, 1382.

By plaintiffs, or a co-plaintiff, on death of sole defendant : Pemberton, 117 ; and see Dan. Pr. 1382 ; or of a co-defendant : *Airey* v. *Steele*, M. R. 3 July, 1865, Rolls' Lib. ; Pemberton, 119 ; Dan. Pr. 1382 ; against devisees of a defendant : *Gregg* v. *Kidd*, M. R. 11 Nov. 1870, Reg. Lib. A. 2716 ; and against a defendant's heir and legal personal representative, already a defendant in another character : *Smith* v. *Guire*, M. R. 2 Mar. 1867, Rolls' Lib.

By all, or one, of the surviving plaintiffs, on death of a co-plaintiff : *Clowes* v. *Prescott*, M. R. 6 March, 1866, Reg. Lib. A. 472 ; Pemberton, 118 ; and see Dan. Pr. 1378, 1382, 1386.

By plaintiffs against a co-plaintiff, as personal representative, or heir, of a deceased defendant : Pemberton, 120.

By personal representative of sole plaintiff in a creditors' suit, against sole defendant : *Fox* v. *Gurnell*, M. R. 17 April, 1866, Rolls' Lib. ; and *post*, No. 1666.

By a defendant after decree, on death of a plaintiff, or of a co-defendant : Pemberton, 121 ; and see Dan. Pr. 1379.

By plaintiff, against representative of a deceased accounting party, with an account of his estate on non-admission of assets : *Carter* v. *Drew*, M. R. 19 Dec. 1862, Reg. Lib. A. 2451 ; Pemberton, 123, 124 ; Seton, 1164, No. 2 ; and *post*, No. 1666 ; and see Dan. Pr. 1380.

By persons served with notice of decree, and having liberty to attend : *Peterson* v. *Peterson*, 19 Dec. 1861, Reg. Lib. B. 2325 ; Pemberton, 124 ; and see Dan. Pr. 1379, 1382, n. (*q*).

On death of plaintiff, a corporation sole, see Dan. Pr. 1378.

On marriage of sole female plaintiff, or female co-plaintiff, where no next

1666. General form of petition of course for order of revivor, or supplemental order.

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

State the last material proceeding or decretal order in the suit; the abatement or defect in the suit; and the devolution of interest: see ante, No. 1664.

This cause having become abated [*Or*, defective] in manner aforesaid,

Your petitioner humbly prays,

State nature of order required; as thus:

(1) *Revivor:*

that this suit may stand revived, at the suit of your petitioner, against the said C. D., and be in the same plight and condition as the same was in at the time of the said abatement (*e*).

(2) *Supplement:*

that the said decree, and the accounts and inquiries thereby directed, and the proceedings

friend is required: *White* v. *Young*, M. R. 3 May, 1865, Reg. Lib. B. 957; Pemberton, 133; Seton, 1165, No. 4; and see Dan. Pr. 1378, 1383; and where a next friend is required: *Ashton* v. *Yeates*, M. R. 25 May, 1866, Rolls' Lib; Pemberton, 133; Seton, 1165, No. 4; and see Dan. Pr. 1378, 1383.

On marriage of a female plaintiff, and settlement of her interest: *Rundle* v. *Rundle*, M. R. 27 July, 1863, Rolls' Lib.; Pemberton, 133; Seton, 1167, No. 10; and see Dan. Pr. 1378.

On marriage of female defendant, and settlement of her interest: *Kennedy* v. *Kennedy*, M. R. 17 Nov. 1870, Reg. Lib. A. 2798.

By husband, surviving plaintiff, as personal representative of his wife, a co-plaintiff: *Re Stanley, Legg* v. *Newman*, M. R. 12 April, 1865, Rolls' Lib.; Pemberton, 139.

On death of plaintiff, the next friend of co-plaintiffs: Pemberton, 142.

On an alienation, or assignment, *pendente lite*, see Dan. Pr. 1384, 1385; Pemberton, 136, 143.

Against new trustees of deeds or wills: *Alston* v. *Pyddoke*, M. R. 26 Jan. 1866, Rolls' Lib.; *Ridgway* v. *Woodhouse*, M. R. 6 June, 1864, Rolls' Lib., and *post*, No. 1666; Pemberton, 142, 143.

Against trustees of deeds, already defendants in another character: *Smith* v. *Guire*, M. R. 5 May, 1870, Rolls' Lib.

Where material proceedings have been taken in the absence of necessary parties: Pemberton, 151; Dan. Pr. 1393.

With liberty to put in an answer, or with direction to answer former interrogatories: Dan. Pr. 1380.

On birth of infant since decree: *Re Willoughby, Beresford* v. *Cane*, M. R. 1 Aug. 1865, Rolls' Lib.; and since order on further consideration: *Nicholson* v. *Armitage*, V. C. B. 4 Nov. 1870, Reg. Lib. B. 2656; and see Seton, 1166, No. 9; Dan. Pr. 1382; Pemberton, 62—66.

And on death of a petitioner under the Trustee Relief Act: Dan. Pr. 1382.

(*e*) *Fox* v. *Gurnell*, M. R. 17 April, 1866, Rolls' Lib.; and see Seton, 1164, No. 1; Dan. Pr. 1392.

thereunder, may be carried on and prosecuted, at the suit of your petitioner, against the said C. D., in like manner as they might have been against the said late defendant E. F., if he had not died (*f*).

(3) *Admission of assets, or account:*

And that what on taking the said accounts shall appear to be due from the said E. F., may be answered by the said C. D., his executor [*Or*, administrator], out of his assets, in a due course of administration; and that in case the said C. D. shall not admit assets of the said E. F. sufficient for that purpose, an account may be taken of his personal estate come to the hands of the said C. D., or of any person or persons by his order, or for his use (*g*).

And your petitioner will ever pray, &c.

1667.

Motion paper, for supplemental order, by trustee, on bankruptcy of sole plaintiff (*h*).

See *ante*, No. 1665; and *post*, No. 1668.

1668.

Petition of course, for the like (*h*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

State the last material proceeding, or decretal order; the bankruptcy; and the appointment of the petitioner as trustee: see ante, No. 1664.

(*f*) *Ridgway* v. *Woodhouse*, M. R. 6 June, 1864, Rolls' Lib.

(*g*) *Re Penney, Penney* v. *Lancaster*, M. R. 8 Dec. 1856, Rolls' Lib.; and see Dan. Pr. 1380; Pemberton, 123, 124; Seton, 1164, No. 2.

(*h*) See Dan. Pr. 63, 1381; Pemberton, 6—9, 144—150; and notes to Nos. 1665, 1666, *ante*. For order at the instance of the creditor's assignee of a bankrupt sole plaintiff, see Pemberton, 146, 147; and see Dan. Pr. 1381; at the instance of plaintiffs, against the assignees of a bankrupt defendant: Pemberton, 148; Seton, 1165, Nos. 5, 6; and see Dan. Pr. 1381; and at the instance of parties having liberty to attend, against the assignees of a bankrupt sole plaintiff: *Peterson* v. *Peterson*, M. R. 19 Dec. 1861, Reg. Lib. B. 2325. For order, at the instance of the plaintiff, against the trustee of a bankrupt's property, see *Palmer* v. *Fleming*, M. R. 20 July, 1870, Rolls' Lib.; and against the trustee appointed under a petition of arrangement, see *Earl of Cork and Orrery* v. *Russell*, V. C. M. 3 Nov. 1870, Reg. Lib. A. 2651. For order at the instance of the bankrupt, for leave to carry on a suit instituted by his assignee: the bankruptcy having been annulled: see *Slater* v. *Du Putron*, M. R. 24 April,

This suit having become defective in manner aforesaid,

Your petitioner humbly prays that

If before decree: he may be at liberty to carry on and prosecute this cause against the defendants, in like manner as the plaintiff might have done if he had not become bankrupt.

Or, if after decree: that he may have the benefit of the said decree, and of the several orders made in this cause, and of the proceedings taken thereunder, and be at liberty to carry on and prosecute the further proceedings in this cause against the defendants, in like manner as the plaintiff might have done, if he had not become bankrupt.

And your petitioner will ever pray, &c.

1669.

Motion paper, for supplemental order, by committee, on lunacy of sole plaintiff (*i*).

See *ante*, No. 1665; and *post*, No. 1670.

1670.

Petition of course, for the like (*i*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

State the last material proceeding, or decretal order; the finding of the plaintiff to be a lunatic; and the appointment of the petitioner as committee: see ante, No. 1664.

This suit having become defective (*Continue as in* No. 1668, *ante, to the end: substituting* a lunatic, *for* bankrupt).

1867, Reg. Lib. B. 1022. For the practice where a plaintiff becomes bankrupt, see Dan. Pr. 63, 64, 717. As to the bankruptcy of trustees or executors, see Pemberton, 149; Williams' Exors. 1929. For form of notice of motion by defendant, to dismiss or stay suit, unless prosecuted by assignee, or trustee, of bankrupt sole plaintiff, see *ante*, No. 684.

(*i*) See Dan. Pr. 81, 1382. For orders in like case, see *Fereday* v. *Tinsley*, V. C. W. 30 July, 1866, Reg. Lib. A. 2192; Seton, 1166, No. 7; Pemberton, 150. For the practice where the plaintiff becomes lunatic during the suit, see Dan. Pr. 81, 82; Pemberton, 150. For order at the instance of the plaintiff, against the committee of a defendant, see Pemberton, 151; Dan. Pr. 1383.

1671.
Motion paper, for supplemental order, by new committee of plaintiff (*k*).

See *ante*, No. 1665; and *post*, No. 1672.

1672.
Petition of course, for the like (*k*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of E. F., of (*residence and addition*).

Showeth as follows:

Recite the order for the former committee to carry on the suit; the appointment of the petitioner in his place; and the last material proceeding or decretal order in the suit: see ante, No. 1664.

This suit having become defective (*Continue as in* No. 1668, *ante, to the end: substituting* a lunatic, *for* bankrupt).

1673.
Summons, for leave to serve order of revivor out of the jurisdiction (*l*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that he may be at liberty to serve C. D., at ——, or elsewhere in the kingdom of, *&c.*, with the order of revivor made in this cause dated the —— day of ——, 187—; and that the said C. D. may have —— days after such service to enter an appearance to [*Or*, to apply to the Court to discharge] the said order.

1674.
Præcipe for appearance, and notice thereof (*m*).

The same as Nos. 484, 485, *ante*.

1675.
Appointment of guardian *ad litem*, for a person under disability (*n*).

See *ante*, Nos. 108—120, in the case of infants; and Nos. 122—136, in the case of idiots, lunatics, and persons of unsound or weak mind: which can be readily adapted to the case of a

(*k*) See Dan. Pr. 82, 1383; Pemberton, 26, 150. As to the course where a new committee is appointed of a defendant, see Pemberton, 151.

(*l*) *Shaw* v. *Wilson*, V. C. M. at Chambers, 6 Nov. 1869, Reg. Lib. B. 2640. As to the parties to be served with an order of revivor, or supplemental order, and the mode and effect of service, and as to substituted service, see Dan. Pr. 1383, 1384. For order for substituted service of an order of revivor, and of all notices and proceedings in the suit, see *Ratcliffe* v. *Barnard*, M. R. 24 Feb. 1870, Reg. Lib. B. 429.

(*m*) See Dan. Pr. 1384; and notes to Nos. 484, 485. *ante*. As to when an appearance to an order of revivor, or supplemental order, is necessary, see Dan. Pr. 1384; 15 & 16 Vic. c. 86, s. 52; Pemberton, 113, 114.

(*n*) See Dan. Pr. 1384; and notes to Nos. 108—120, 122—136, *ante*. As to the necessity for the appointment of a guardian in this case, see Dan. Pr.

person, under a like disability, served with an order of revivor, or supplemental order.

1676. Notice of motion, to discharge order of revivor, or supplemental order (*o*).

Formal parts: see ante, No. 55 (*p*).

on the part of the defendant A. B. [*or as may be*], that the order dated the —— day of ——, 187—, whereby it was ordered that, *&c.*

Or, that so much of the order, dated the —— day of ——, 187—, as directs that, *&c.*

may be discharged: with costs, to be paid by the plaintiff (*Or other party who obtained the order*) to the said A. B.

Section II.—Supplemental Orders, in other Cases (*q*).

1677. Motion paper, for leave for a new public officer to carry on suit (*r*).

Formal parts: see ante, No. 53.

To move on behalf of the —— company, for an order to carry on this suit in the name of C. D., as their public officer, in lieu of A. B., the nominal plaintiff therein, who has died [*Or*, resigned—*Or*, been removed].

An affidavit in support accompanies.

1678. Affidavit in support (*r*).

Formal parts: see ante, No. 9.

1. The bill in this cause was filed on behalf of the above named company, by the above named A. B. as their registered public officer; and this cause is still pending.

1384; 15 & 16 Vic. c. 86, s. 52; Ord. XXXII. 1; Pemberton, 115. For forms of consent of guardian to act, see *post*, Chap. XLIV.

(*o*) See Dan. Pr. 1380, 1384, 1389. For order in like case, see Seton, 1167, No. 11. For the grounds on which the order may be discharged, and the time allowed for making the application, see 15 & 16 Vic. c. 86, s. 52; Ord. XXXII. 1; Dan. Pr. 1384, 1389, 1390; Pemberton, 84, 115.

(*p*) As to the title, see Dan. Pr. 1389.

(*q*) See Dan. Pr. 1393, 1394. As to the course, where, during a suit by or against the Treasury Solicitor, that officer is changed, see *ib.* 1394. As to the course where, during a suit by or against a railway company, the company is amalgamated with another, see *ib.*; and see the Railway Clauses Act, 1863 (26 & 27 Vic. c. 92), ss. 36—55; and for form of order in like case, see Braithwaite's Pr. 556. As to the course, on the appointment of an administrator, or new interim curator, in suits by curators of a convict's property, under the 33 & 34 Vic. c. 23, s. 26, see Dan. Pr. 1394. As to suits by or against official managers and liquidators, see Dan. Pr. 27, n. (*a*), 1394, n. (*t*).

(*r*) See Dan. Pr. 26, 1394. As to the companies entitled to sue and be sued by their public officer, and the needful proceedings on his death, resignation,

2. On the —— day of ——, 187—, the said A. B. died.
Or, resigned—*Or*, was removed from—his office of public officer of the said company.
3. C. D., of (*residence and addition*) is now the public registered officer [*Or*, one of the public registered officers] of the said company; and is duly registered and appointed to sue, and be sued, on behalf of the said company.
4. *Show means of knowledge.*

1679.
Petition of course, to name a new relator, for a sole relator deceased: the informant consenting (*s*).

Title—and address to the M. R.: see ante, No. 56.
The humble petition of A. B., of (*residence and addition*).
Showeth as follows:
1. The information in this cause was filed at and by the relation of C. D.
2. The said C. D. died on the —— day of ——, 187—.
3. *State the last material proceeding, or decretal order, in the suit.*
4. Your petitioner is desirous to be appointed relator in the said information, in lieu of the said C. D.: to which Her Majesty's Attorney-General consents (*t*).
Your petitioner therefore humbly prays that
If before decree: the information in this cause may be amended, by inserting his name as the relator therein, in lieu of the said C. D.
Or, if after decree: he may be named as relator in the said information, in all subsequent proceedings in this suit, in lieu of the said C. D.
And your petitioner will ever pray, *&c.*

SECTION III.—APPOINTING, OR DISPENSING WITH, A REPRESENTATIVE, UNDER 15 & 16 VIC. C. 86, S. 44 (*x*).

1680.
Motion paper, to appoint a representative (*u*).

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff [*or as may be*], that the defendant A. B.

or removal, see Dan. Pr. 26, 1394; 7 Geo. IV. c. 46, s. 9. For order in like case, see *Meek* v. *Burnley*, M. R. 12 Jan. 1863, Reg. Lib. B. 6; and see Seton, 1173, No. 1.

(*s*) As to the needful proceedings on a relator's death, see Dan. Pr. 17; and for forms of authority by a relator to use his name, see *post*, Chap. XLIV.

(*t*) The consent must be subscribed to the petition. For form of consent, see *ante*, No. 59.

(*u*) For order in like case, see *Re Blithman*, M. R. 22 June, 1865, Reg. Lib. A. 1243; and see Seton, 1178, Nos. 2, 3; Pemberton, 127; Dan. Pr. 183, 1386. As to revivor in such case, see Dan. Pr. 1386.

(*x*) For the cases within section 44, see Dan. Pr. 179, 180—183, 1386;

Or, A. B., of (*residence and addition*),
may be appointed to represent the estate of C. D.,
Or, the respective estates of C. D. and E. F.,
deceased, in the plaintiff's bill named [*or as may be*], for the purposes of this suit.

1681.

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff (*Continue as in* No. 1680, *ante, to the end*).

Notice of motion, or summons, for the like (*y*).

1682.

Formal parts: see ante, No. 53.
To move on behalf of the plaintiff [*or as may be*], that this cause, and the proceedings therein, may be carried on and prosecuted, notwithstanding the absence of any person representing the estate of A. B.,
Or, the respective estates of A. B., and C. D.,
deceased, in the plaintiff's bill named [*or as may be*].

Motion paper, to dispense with a representative (*z*).

1683.

Formal parts: see ante, No. 60.
on the part of the plaintiff (*Proceed as in* No. 1682, *ante, to the end*).

Summons, for the like (*z*).

Pemberton, 125—129. As to the power of the Court of Probate to appoint an administrator *pendente lite*, see 20 & 21 Vic. c. 77, s. 70; 21 & 22 Vic. c. 95, s. 22; Dan. Pr. 183. An application under section 44 is usually made by *ex parte* motion: Dan. Pr. 183; or by *ex parte* summons, after decree, where the representation is required for the purpose of accounts or inquiries at Chambers: *ib.* n. (*g*). Before the order is drawn up, notice should be given to the party entitled to administer: Pemberton, 127; Dan. Pr. 183. As to correcting the title of the cause, see Dan. Pr. 183, n. (*i*). No appearance is required to be entered by the party appointed; but notice of his appointment, and of the name and address of the solicitor who will act for him, should be given to the Record and Writ Clerk, for the purpose of service; and the order should be produced to him for entry: Dan. Pr. 183.

(*y*) For order in like case, on summons, see *Re Harding, Read* v. *Harding*, M. R. at Chambers, 9 Mar. 1864, Reg. Lib. A. 560.

(*z*) See Dan. Pr. 183, 1386. For order in like case, see Seton, 1178, No. 1; Pemberton, 127.

Section IV.—Supplemental Statements (*a*).

1684.

Formal parts of a supplemental statement (*b*).

In Chancery.

Between (*Set out the full title of the cause, and the reference to the record*).

Statement, by way of supplement, to be annexed to the bill of complaint of the above named plaintiff.

1. 2. 3. } (*Set forth, concisely, the supplemental matter, in paragraphs, numbered consecutively.*)

(*Name of counsel.*)

1685.

Præcipe, on stamping copy statement for service (*c*).

The same as No. 277, *ante:* substituting "statement," for "bill."

1686.

Indorsement on copy for service (*d*).

The same as No. 278, *ante:* substituting "within statement," for "within bill of complaint."

1687.

Formal parts of interrogatories for defendant's examination (*e*).

The same as No. 359, *ante:* introducing "statement annexed to," before "plaintiff's bill of complaint."

(*a*) For the practice as to supplemental statements, see Dan. Pr. 1395—1396; 15 & 16 Vic. c. 86, s. 53; Ord. XXXII. 2; and see Pemberton, 129—132.

(*b*) See Dan. Pr. 1395. The statement must be either written or printed on paper of the same description and size as that on which bills are printed: Ord. XXXII. 2; Ord. 6 Mar. 1860, r. 16; and be signed by counsel: Dan. Pr. 1395. As to such paper, see *ante*, No. 195. A filing fee of 10*s.* higher scale, or 5*s.* lower scale, is payable in a fee fund stamp impressed on, or affixed to the statement: see *ante*, No 1554 (5).

(*c*) See Dan. Pr. 1395; and note to No. 277, *ante*. No fee is payable for stamping the copy: Braithwaite's Pr. 81.

(*d*) See Dan. Pr. 1395; and note to No. 278, *ante*. As to the service, see Dan. Pr. 1395. For forms of *præcipe* for appearance, and notice of appearance, see *ante*, Nos. 484, 485, and notes thereto.

(*e*) See Dan. Pr. 1395. As to interrogatories in answer to the bill, see *ante*, Nos. 359—378, and notes thereto. For the formal parts of answers, see *ante*, Nos. 531—543, and notes thereto. As to filing replication to a supplemental statement, see Dan. Pr. 1395; and see, as to replication to a bill, *ante*, Nos. 715—730, and notes thereto.

Section V.—Supplemental Bills (*f*).

1688.

Formal parts of a supplemental bill (*g*).

Title of the suit—address of the bill—and name and address of the plaintiff: as in *ante*, No. 154, *et seq.*; but say "supplemental bill of complaint," instead of "bill of complaint."

1. }
2. } (*Statements and allegations* (*h*).)
3. }

Prayer (*i*).

The plaintiff prays as follows:

1. That this bill may be taken as supplemental to the said bill.
2. That the plaintiff may have such and the same benefit of the said suit and proceedings as if the said A. B. and C. D. had been made defendants to the said bill.
3. That the plaintiff may have such further or other relief as the nature of the case may require.

The defendants to this supplemental bill of complaint (*&c.: Conclude as in* No. 154, *ante*).

1689.

Formal parts of an original bill in the nature of a supplemental bill (*k*).

Title of the suit—address of the bill—and name and address of the plaintiff: as in *ante*, No. 154, *et seq.*

1. }
2. } (*Statements and allegations*).
3. }

Prayer (*l*).

1. That the plaintiff may have the full benefit of the

(*f*) For the practice as to supplemental bills, see Dan. Pr. 1386, 1396—1401; and Ord. XXXII. 3; and see Pemberton, 24—43.

(*g*) See Dan. Pr. 1386, 1397. A supplemental bill is signed by counsel; and is printed, filed, and served in the same manner as an original bill: Dan. Pr. 1397, 1398. As to original bills, see *ante*, No. 154, *et seq.*, and notes thereto. As to interrogatories, demurrers, pleas, answers, replications, motions for decree, evidence, hearing, and subsequent proceedings in supplemental suits, see Dan. Pr. 1398—1401; and *post*, Index. For forms of supplemental bills, see Lewis Eq. Drafting, 328; Pemberton, 157—168; 1 Van Hey. 516—568; Whitworth Eq. Pl. 474; Willis Eq. Pl. 326—356; and for forms of decrees on supplemental bills, see Seton, 1174, *et seq.*; Pemberton, 28, 29, 33, 34.

(*h*) It is not necessary to set forth in the bill any of the statements in the pleadings in the original suit: unless the special circumstances of the case require it: Dan. Pr. 1386, 1397; Ord. XXXII. 3.

(*i*) See Pemberton, 165.

(*k*) See Dan. Pr. 1397, 1398; Pemberton, 38—43. For forms of original bills in the nature of supplemental bills, see Pemberton, 172—186.

(*l*) Pemberton, 180.

said original suit of B. *v.* S., and the proceedings therein.

2. That the decree dated, *&c.*, made in the said original suit, may be carried into execution, and the accounts and inquiries, and several other matters thereby directed, and the several proceedings thereunder, carried on and prosecuted between the parties to this suit, in like manner as by the said decree between the parties to the said original suit.
3. That, if necessary, the said original suit may be revived (*m*); and this suit be deemed and taken to be supplemental to the said original suit.
4. That the plaintiff may have such further or other relief as the nature of the case may require.

The defendants to this bill of complaint (*&c.: Conclude as in* No. 154, *ante*).

(*m*) There seems no occasion to pray for the revivor of the original suit. No order of revivor is drawn up in these cases; the original suit is considered at an end; and the decree, when made upon this bill, sufficiently restores the original suit: Pemberton, 178, n.

CHAPTER XXXIV.

FRAME AND END OF CERTAIN KINDS OF BILLS.

Section I.—Cross Bills, and Interrogatories for the Examination of Plaintiffs (*a*).

1690. Form of a cross bill (*b*).

The formal parts of a cross bill are the same as those of an original bill: as to which, *see ante*, No. 154, *et seq.* A cross bill should state the original bill, and proceedings thereon, and the rights of the party exhibiting the bill which are necessary to be made the subject of cross litigation; or the ground on which he resists the claims of the plaintiff to the original bill: if that is the object of the new bill (*c*). The cross bill need not refer to the original suit: it is sufficient if the subject matter is the same (*d*).

1691. Motion paper, to enlarge time to answer in cross suit, till after answer in original suit (*e*).

Short titles of the two suits, and other formal parts: see ante, No. 53.

To move on behalf of A. B., the plaintiff in the first, and a defendant in the second suit, that he may have one week's time to plead, answer, or demur, not demurring alone, in the second suit, after the plaintiffs in that suit have answered the bill in the first suit.

Prints of the bills accompany.

(*a*) As to cross bills, see Dan. Pr. 1402—1408; Adams on Eq. 402; Coop. Eq. Pl. 85; Harr. by Newl. 81; Ld. Red. 81—83; Story Eq. Pl. s. 389; Welford Eq. Pl. 223. As to the costs of cross suits, see Dan. Pr. 1408; Morgan & Davey, 146; and as to security for costs therein, see Dan. Pr. 1405.

(*b*) See Dan. Pr. 1403. For forms of cross bills, see 1 Van Hey. 361; Willis Eq. Pl. 357, 364.

(*c*) Dan. Pr. 1403. As to service of cross bills, see *ib.*

(*d*) Dan. Pr. 1402, n. (*a*).

(*e*) See Dan. Pr. 1403, 1404. For order in like case, see *Garwood* v. *Curteis*, V. C. W. 30 Jan. 1864, Reg. Lib. A. 136.

1692.

Petition of course, to enlarge time to answer in cross suit, till after answer in original suit (*f*).

Titles of the two suits—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff in the first mentioned suit.

Showeth as follows:

1. These suits are in the nature of original and cross suits.

2. The bill in the first mentioned suit was filed by your petitioner on the —— day of ——, 187—. On the —— day of ——, 187—, interrogatories were filed for the examination of the defendants in answer to the said bill, but no answer thereto has yet been filed [*or as may be*].

3. The cross bill in the second mentioned suit was filed on the —— day of ——, 187—, against your petitioner, who has appeared thereto. The plaintiffs therein are defendants to the said bill of your petitioner.

4. On the —— day of ——, 187—, interrogatories were filed in the said second mentioned suit for the examination of your petitioner: who has not yet put in his answer thereto.

Your petitioner therefore humbly prays, that he may have one week's time to plead, answer, or demur, not demurring alone, in the second mentioned suit, after the plaintiffs in that suit shall have put in their answer to the bill in the first mentioned suit.

And your petitioner will ever pray, &c.

1693.

Motion paper, to stay proceedings in original suit, till after cross bill is answered (*g*).

Short titles of the two suits, and other formal parts: see ante, No. 53.

To move on behalf of C. D. and E. F., defendants in the first, and the plaintiffs in the second suit, that all further proceedings in the first suit may be stayed till the plaintiff in that suit has answered the bill in the second suit.

Prints of the bills accompany.

1694.

Petition of course, for the like (*h*).

Titles of the two suits—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff in the second mentioned suit.

Showeth as follows:

1. The plaintiffs in the first mentioned suit, on the —— day of ——, 187—, filed their original bill against your petitioner: who appeared, and put in his answer thereto.

2. Subsequently to the said answer being sufficient, namely, on

(*f*) See Dan. Pr. 1403.

(*g*) *Ibid.*, 330, 1404. A statement of the dates of the several proceedings in each suit should be set out in the fold: see *post*, No. 1694.

(*h*) See Dan. Pr. 1404. For order in like case, see *Pole* v. *Leask*, M. R. 29 May, 1855, Rolls' Lib.

the —— day of ——, 187—, your petitioner filed his cross bill in the second mentioned suit against the plaintiffs in the first mentioned suit: who appeared thereto; and on the —— day of ——, 187—, your petitioner filed interrogatories for their examination in answer to such bill; but no answer to such interrogatories has yet been filed.

3. Subsequently to the filing of such cross bill and interrogatories, namely, on the —— day of ——, 187—, the plaintiffs in the first mentioned suit obtained an order to amend their said original bill; and on the —— day of ——, 187—, they materially amended the same; and on the —— day of ——, 187—, they filed interrogatories for the examination of your petitioner in answer to the said amended bill.

Your petitioner therefore humbly prays, that all proceedings in the first mentioned suit may be stayed until the plaintiffs therein shall have fully answered your petitioner's cross bill.

And your petitioner will ever pray, &c.

1695.

Summons, by plaintiff in cross suit, to enlarge time to take evidence in original suit till cross bill answered (*i*).

Titles of the two suits, and other formal parts: see ante, No. 60. on the part of the defendant in the first suit and plaintiff in the second suit, that the time for closing the evidence in the first suit may be enlarged until one month after the plaintiffs in that suit shall have put in their answer to the plaintiff's bill in the second suit.

1696.

Motion paper, to read in original and cross suits evidence taken in either of them (*k*).

Short titles of the two suits, and other formal parts: see ante, No. 53.

To move on behalf of the plaintiffs in the first suit [*or as may be*], that, in each of these suits (which are original and cross suits), the plaintiffs and defendants, respectively, may be at liberty to read at the hearing the evidence taken in the other of these suits: saving all just exceptions.

1697.

Petition of course, for the like (*k*).

Titles of the two suits—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff in the first mentioned suit [*or as may be*].

Showeth as follows:

(*i*) See Dan. Pr. 1404. For order in like case, see *United States of America v. Prioleau*, V. C. W. 6 July, 1866, Reg. Lib. B. 1707.

(*k*) See Dan. Pr. 764, 767, 768, 838, 1405; Ord. XIX. 5. For order in like case, see Seton, 1275, No. 2.

These suits are original and cross suits, and issue has been joined therein.

Your petitioner therefore humbly prays, that in each of these suits the plaintiffs and defendants, respectively, may be at liberty to read, at the hearing thereof, the evidence taken in the other of these suits: saving all just exceptions.

And your petitioner will ever pray, &c.

1698.

Motion paper, to advance original or cross suit, to come on with the other (*l*).

Short titles of the two suits, and other formal parts: see ante, No. 53.

To move on behalf of the plaintiff in the second suit [*or as may be*], that the first [*Or*, second] of these suits (which are original and cross suits), may be advanced, to come on for hearing with the other.

1699.

Formal parts of concise statement and interrogatories, for the examination of plaintiffs (*m*).

In Chancery.

(*Set forth the full title of the cause* (*n*), *and reference to the record.*)

Interrogatories, with concise statement prefixed, filed by the above named defendants (*o*), for the examination of the above named plaintiffs (*p*).

STATEMENT.

1. } [*State, concisely* (*in numbered paragraphs, if convenient*), *the*
2. } *subjects on which a discovery is sought.*]
3. }

INTERROGATORIES.

1. }
2. } (*Set forth the interrogatories, in numbered paragraphs.*)
3. }

NOTE.—The plaintiffs [*or as may be*] are required to answer all these interrogatories.

(*Name of counsel.*)

(*l*) See Dan. Pr. 838, 1405. The order is not now made on petition of course. As to the transfer of either suit, see Dan. Pr. 1405. As to the hearing, see *ib.*

(*m*) See Dan. Pr. 406, 1406; 15 & 16 Vic. c. 86, s. 19; Braithwaite's Pr. 39, 40. For the practice as to filing, serving, and amending concise statements and interrogatories, see Dan. Pr. 1406, 1407.

(*n*) The title of the interrogatories must be the same as that of the bill at the time the interrogatories are filed: see *ante*, No. 359, n. (*c*).

(*o*) If the interrogatories are not filed by the only defendant, or all the defendants, state by whom they are filed.

(*p*) If the interrogatories are not filed against the only plaintiff, or all the plaintiffs, state against whom they are filed.

Formal parts: see ante, No. 60.

1700. Summons for time for plaintiff to answer (*q*).

on the part of the plaintiff, that he may have —— weeks further time to answer the interrogatories filed by the defendants for his examination; and that the costs of this application may be costs in the cause.

1701. Formal parts of answer (*r*).

In Chancery.

(*Title of the cause, and reference to the record.*)

The joint and several answer of the above named plaintiffs W. S. and J. P., to the concise statement and interrogatories filed by the above named defendants, for the examination of the above named plaintiffs.

In answer to the said concise statement and interrogatories, we, the said W. S. and J. P., jointly and severally say, as follows.

1.

2.

3.

(*Name of counsel.*)

(*Signatures of plaintiffs and jurat: see ante*, No. 559.)

Section II.—Bills of Discovery (*s*).

1702. Form of a bill of discovery (*t*).

The formal parts of a bill of discovery are the same as those of an original bill: as to which, see *ante*, No. 154, *et seq.* The bill must state the matter touching which discovery is sought;

(*q*) See Dan. Pr. 1406. For orders in like case, see *Watson* v. *International Bank, Limited*, V. C. K. at Chambers, 22 Dec. 1865, Reg. Lib. B. 2458; *De la Peyrouse* v. *Pelly*, V. C. W. at Chambers, 22 Dec. 1865, Reg. Lib. A. 2423. Unless there has been excessive delay on the part of the defendant the proceedings in the suit will be stayed till the plaintiff has put in his answer: Dan. Pr. 1407. For the practice as to swearing, filing, printing, and furnishing copies of the plaintiff's answer, see Dan. Pr. 640—661, 1406; Ord. 6 Mar. 1860, r. 16. As to the process to compel, and proceedings in default of answer, see Dan. Pr. 411, *et seq.*, 1406; and *ante*, No. 379, *et seq.* As to exceptions for scandal, see Dan. Pr. 290—296, 661, 1407; and *ante*, Nos. 61—69; and for insufficiency, see Dan. Pr. 661—676, 1407; and *ante*, Nos. 606—627.

(*r*) *Shield* v. *Taylor* (1862. S. 190). For forms of headings of answers to bills, see *ante*, Nos. 531—543.

(*s*) As to bills of discovery, see Dan. Pr. 1408—1412; Adams on Eq. 1; Coop. Eq. Pl. 58; Harr. by Newl. 57; Jeremy on Eq. 257; Ld. Red. 452; 1 Mad. Pr. 196, 2nd ed.; 267, 3rd ed.; Story Eq. Jur. s. 1480; Story Eq. Pl. s. 311; Welford Eq. Pl. 118.

(*t*) See Dan. Pr. 1409. For forms of bills of discovery, see 1 Van Hey. 483;

the interest of the plaintiff and defendant in the subject; and the facts and circumstances upon which the right of the plaintiff to require the discovery from the defendant is founded. The bill should pray that the defendant may make a full discovery of the matters therein stated. It may also pray any equitable assistance of the Court which is merely consequential upon the prayer for discovery; but it should not pray general relief: for then it is a bill for relief (*u*).

1703.

Affidavit, by sole plaintiff: to be annexed to a bill for discovery of documents, and for relief thereon (*u*).

In Chancery.

(*Title of the cause.*)

I, A. B., of (*residence and addition*), the above named plaintiff, make oath and say, as follows:

1. I have not, and to the best of my knowledge, remembrance, and belief, I never had, in my custody or power the (*Describe the document; as thus:*

indenture dated the —— day of ——, 187—, mentioned in the first paragraph of the bill in this cause hereunto annexed —*Or*, now produced and shown to me (*y*), and marked A.).

2. I do not know where the said indenture [*or as may be*], now is: unless it is in the custody or power of the above named defendant [*Or*, defendants, or some or one of them].

Sworn (*&c.: see ante*, No. 12).

1704.

The like, by several plaintiffs (*u*).

In Chancery.

(*Title of the cause.*)

We, A. B., of (*residence and addition*), C. D., of *&c.*, and E. F., of, *&c.*, the above named plaintiffs, each speaking positively for himself, and to the best of his knowledge, information, and belief as to other persons, severally make oath and say, as follows:

1. We have not, nor have, nor hath any or either of us, and, to the best of our knowledge, information, and belief, we, or any or either of us, never had, in our, or any or either of our custody, possession or power the (*Describe the document; as thus:*

deed of gift mentioned in the second paragraph of the bill in this cause hereunto annexed—*Or*, produced and shown to us respectively (*y*) at the time of swearing this affidavit, and marked B.).

Whitworth Eq. Prec. 343, 346, 376; Willis Eq. Pl. 316, 326; and for the practice as to taking a bill of discovery *pro confesso* against a privileged person, see Dan. Pr. 420, 421, 454, 1412; 11 Geo. IV. & 1 Will. IV. c. 36, ss. 13, 14.

(*u*) Dan. Pr. 1410.

(*y*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

2. We do not, nor do or doth any or either of us, know where the said deed [*or as may be*] now is: unless it is in the custody or power of the above named defendant [*Or*, defendants, or some or one of them].

Sworn (*&c.: see ante*, No. 13).

1705.

Motion paper, by defendant, for payment of his costs of the suit (*z*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant A. B., for an order for payment by the plaintiff of his costs of this suit: the bill being for discovery only.

The defendant's answer was filed on ——, 187—; and no exceptions have been taken thereto [*or as may be*].

1706.

Petition of course, by defendant, for the like (*z*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff on the —— day of ——, 187—, filed his bill in this cause against your petitioner: thereby seeking discovery only, and not praying any relief against him.

2. On the —— day of ——, 187—, your petitioner filed his answer to the said bill; and no exceptions have been taken thereto [*or as may be*].

Your petitioner therefore humbly prays, that the plaintiff may be ordered to pay to your petitioner his costs of this suit.

And your petitioner will ever pray, &c.

(*z*) See Dan. Pr. 1411. For order in like case, see Seton, 1270, No. 5. As to the allegations of the motion paper, or petition, see Dan. Pr. 1327, 1408, 1411. As to the costs of a bill for discovery, see *ib.*; Morgan & Davey, 147, *et seq.*

Section III.—Bills of Interpleader (*b*).

1707.

Form of a bill of interpleader (*c*).

The formal parts of a bill of interpleader are the same as those of an original bill: as to which, see *ante*, No. 154, *et seq.* The bill must state the plaintiff's own rights, and the claims of the defendants; and show the plaintiff's right to compel them to interplead. The bill prays that the defendants may interplead: so that the Court may adjudge to whom the thing belongs, and that the plaintiff may be indemnified. If any suits at law are brought against him, he may also pray that the claimants may be restrained from proceeding, till the right is determined (*d*).

1708.

Affidavit, by sole plaintiff, of no collusion (*e*).

In Chancery.

(*Title of the cause.*)

I, A. B., of (*residence and addition*), the above named plaintiff make oath and say, that the bill in this cause hereunto annexed

Or, now produced and shown to me (*f*), and marked A.,

is not filed in collusion with the above named defendants, or any or either of them; but merely of my own accord, for relief in this honourable Court.

Sworn (*&c.: see ante*, No. 12).

1709.

Affidavit by several plaintiffs, of no collusion (*g*).

Proceed as in ante, No. 1704, *to* as follows; *and continue thus:* The bill in this cause hereunto annexed

Or, produced and shown to us, respectively, at the time of swearing this affidavit (*f*), and marked A.,

(*b*) As to interpleader suits, see Dan. Pr. 1412—1418; Adams on Eq. 202; Coop. Eq. Pl. 45; Harr. by Newl. 45; Jeremy on Eq. 346; Ld. Red. 456; 1 Mad. Pr. 173, 2nd ed.; 239, 3rd ed.; Story Eq. Jur. s. 800; Story Eq. Pl. s. 291; Welford Eq. Pl. 148. As to injunctions in interpleader suits, see Dan. Pr. 1416, 1417; Kerr on Inj. 118—132; Seton, 962, 963; and see *post*, Chap. XXXVI. For the practice as to interpleader at law, see Chitty's Arch. 1391, *et seq.*

(*c*) See Dan. Pr. 1413. For forms of interpleader bills, see 1 Van Hey. 247; Whitworth Eq. Prec. 389; Willis Eq. Pl. 303.

(*d*) See Dan. Pr. 1413.

(*e*) *Ibid.*, 322, 1413. The bill may be referred to in the affidavit either as an exhibit or as annexed: Dan. Pr. 1413, n. (*g*). For forms of demurrer for want of the affidavit, see 2 Van Hey. 77. No fee is payable for filing the affidavit. A copy of the affidavit, sealed at the Record and Writ Clerks' office (but not necessarily an office copy), should be annexed to each copy of the bill for service: Dan. Pr. 322, 367, 1414. As to the costs of an interpleader suit, see *ib.* 1417, 1418; Morgan & Davey, 152, *et seq.*

(*f*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*g*) See Dan. Pr. 1414.

is not filed in collusion by us, or any or either of us, with the above named defendants, or any or either of them ; but merely of our own accord, for relief in this honourable Court.

1710.
Affidavit by one of several plaintiffs, of no collusion (*h*).

In Chancery.

(*Title of the cause.*)

I, A. B., of (*residence and addition*), one of the plaintiffs named in the bill in this cause, and hereunto annexed, make oath and say as follows :

I alone of the plaintiffs have attended to the matters mentioned in the bill of complaint hereunto annexed ; and my co-plaintiffs are not acquainted with the facts ; and I say that the said bill of complaint is not filed in collusion by myself, or any of the plaintiffs therein named, with any of the defendants in the said bill named ; but merely of the plaintiffs' own accord, for relief in this honourable Court.

1711.
The like, by a public officer, so suing (*i*).

Proceed as in No. 1703, *ante*, *to* as follows :

The bill in this cause hereunto annexed

Or, now produced and shown to me (*k*), and marked A., is not filed in collusion by me with the above named defendants, or any of them, nor, to the best of my knowledge, information, and belief, in collusion by, or by any other person or persons on behalf of, the —— company, in the said bill named, with the said defendants or any of them ; but merely of my own accord, as the public officer of the said company, for relief in this honourable Court.

1712.
Affidavit by the plaintiff's solicitor, of no collusion (*l*).

In Chancery.

(*Title of the cause.*)

I, A. B., of (*Place of business*), gentleman, the solicitor in this cause for the above named plaintiff, make oath and say as follows :

1. *Show why the affidavit is not made by the plaintiff ; as thus :* The above named plaintiff is resident at ——, out of the jurisdiction of this honourable Court.

2. The bill in this cause hereunto annexed

Or, now produced and shown to me (*k*), and marked A.,

(*h*) This is the form used in *Gibbs* v. *Gibbs*, cited Dan. Pr. 322, 1414; Braithwaite's Pr. 27 : 5 W. R. 243, V. C. W.; and see Braithwaite's Pr. 369, No. 288.

(*i*) See Dan. Pr. 1414; Braithwaite's Pr. 369.

(*k*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*l*) See Dan. Pr. 322, n. (*t*), 1414 ; Braithwaite's Pr. 27, 370.

is not filed in collusion by me with the above named defendants, or any of them, nor, to the best of my knowledge, information, and belief, in collusion by the above named plaintiff, or by any person or persons on his behalf, with the said defendants, or any of them, nor to avoid or delay the payment of the sum of £——, in the said bill mentioned [*or as may be*]; but merely of the plaintiff's own accord, for relief in this honourable Court.

3. *Show means of knowledge.*

Sworn (*&c. : see ante*, No. 12).

Section IV.—Bills to Perpetuate Testimony (*m*).

1713.

Form of a bill to perpetuate testimony (*n*).

The formal parts of a bill to perpetuate the testimony of witnesses are the same as those of an original bill: as to which see *ante*, No. 154, *et seq.* The bill must state the matter touching which the plaintiff is desirous of taking evidence; and must show that he has some interest in the subject; and pray for leave to examine witnesses touching the matter so stated: to the end that their testimony may be preserved and perpetuated (*o*).

1713a.

Notice of motion by defendant, that plaintiff may proceed within a limited time (*p*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the plaintiff may be ordered to proceed forthwith with this suit; or, in default thereof, to pay to the said defendant his costs of this suit.

1714.

Motion paper, by defendant, for payment of his costs of the suit (*q*).

Formal parts: see ante, No. 53.

To move on behalf of the defendant, A. B., for an order for the payment by the plaintiff of his costs of this suit: which is instituted to perpetuate the testimony of witnesses only.

The plaintiff has examined his witnesses, but the defendant has not examined any witness.

(*m*) As to suits to perpetuate testimony, see Dan. Pr. 1419—1422; Adams on Eq. 23; Coop. Eq. Pl. 52; Harr. by Newl. 52; Hubback, 104; Jeremy on Eq. 273; Ld. Red. 464; 1 Mad. Pr. 185, 2nd ed.; 253, 3rd ed.; Story Eq. Jur. s. 1505; Story Eq. Pl. s. 300; Taylor on Evid. s. 490; Welford Eq. Pl. 139; 5 & 6 Vic. c. 69; Ord. IX. 6.

(*n*) See Dan. Pr. 1419. For forms of bills to perpetuate testimony, see 1 Van Hey. 464; Whitworth Eq. Prec. 352; Willis Eq. Pl. 311.

(*o*) Dan. Pr. 1419. An affidavit of the circumstances by which the evidence intended to be perpetuated is in danger of being lost must be filed with the bill: Dan. Pr. 1420. As to the mode of taking the evidence, see *ib.* 1421.

(*p*) See Dan. Pr. 713.

(*q*) *Ibid.*, 1421. For order in like case, see Seton, 1270, No. 5. As to the

1715.
Petition of course, for the like (*r*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff in this cause on the —— day of ——, 187—, filed his bill against your petitioner: thereby seeking to perpetuate the testimony of witnesses only; and not praying any relief against your petitioner.

2. Your petitioner appeared to the said bill.

3. The testimony of the witnesses to examine whom the said bill was filed has been taken on behalf of the plaintiff; but no witness has been examined on behalf of your petitioner.

Your petitioner therefore humbly prays, that the plaintiff may be ordered to pay to your petitioner his costs of this suit.

And your petitioner will ever pray, &c.

1716.
Notice of motion, for leave to use the evidence (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the proper officer may attend and produce at (*State where, and when, and on what proceeding*), the original record of the proceedings filed in this cause, and the original depositions of A. B., *&c.*, taken therein; and that either of the parties may be at liberty to make such use of the said proceedings and depositions, at the said trial [*or as may be*], as by law they can.

1717.
Affidavit in support (*s*).

Formal parts: see ante, No. 9.

1. The bill in this cause was filed to perpetuate the testimony of witnesses only.

2. Issue having been joined, A. B., C. D., *&c.*, were examined as witnesses in this cause on behalf of the plaintiff; and their depositions were filed on the —— day of ——, 187—.

3. *Show the special grounds for the application; as thus:* The said C. D. died on the —— day of ——, 187—. He is the same person as C. D., named in the paper writing, marked A., now produced and shown to me (*t*), and purporting to be a copy

costs of a suit to perpetuate testimony, see Dan. Pr. 822, 1327, 1421; Morgan & Davey, 147, *et seq.*

(*r*) See Dan. Pr. 1421.

(*s*) *Ibid.*, 1422; and see the orders in *Biddulph* v. *Lord Camoys*, M. R. 20 July, 1854, Reg. Lib. A. 1564: 19 Beav. 467; 30 April, 1855, Reg. Lib. A. 888: 20 Beav. 402.

(*t*) Exhibit certificate of death or burial. For form of memorandum of exhibit, see *ante*, No. 43.

of an entry in the Register book of deaths [*Or*, burials] kept for (*Describe the Register book*).

4. *State on what proceeding the depositions are desired to be used.*

5. *Show means of knowledge.*

Section V.—Bills of Review, and Bills in the Nature of Bills of Review (*u*).

1718.

Formal parts of bill (*v*).

The formal parts of a bill of review, or of a bill in the nature of a bill of review, are the same as those of an original bill: as to which see *ante*, No. 154, *et seq.*

1719.

Petition for leave to file a bill, or supplemental bill, in the nature of a bill of review (*x*).

Title—and address: see ante, No. 56.

The humble petition of, *&c.*

Showeth as follows:

1. *State the material proceedings in the cause, leading up to, and the grounds for filing, the proposed bill.*

Your petitioner is advised that it is necessary to obtain the leave of this honourable Court to exhibit a bill, or supplemental bill, in the nature of a bill of review (as the case may require), in order to obtain the relief to which he is entitled under the circumstances aforesaid.

Your petitioner therefore humbly prays your lordship, that he may be at liberty to exhibit a bill, or supplemental bill, in the nature of a bill of review (as the case may require), upon or with respect to the matters hereinbefore stated, touching the estate and effects of the said testator, and the management and disposition thereof, and otherwise relating thereto [*or as may be*], and for relief in respect thereof, as he may be advised.

Or that your lordship, (*&c: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*u*) As to bills of this description, see Dan. Pr. 1422—1428; Coop. Eq. Pl. 88; Harr. by Newl. 84; Ld. Red. 472, 473; 2 Mad. Pr. 536, 2nd ed.; 709, 3rd ed.; Story Eq. Pl. s. 403; 1 Van Hey. 570; Welford Eq. Pl. 231; and for forms of such bills, see 1 Van Hey. 571; Whitworth Eq. Prec. 466; Willis Eq. Pl. 368—380; see also Dan. Pr. 1425. For form of demurrer to a bill of review, see Willis Eq. Pl. 483. As to the deposit required on filing the bill, see Dan. Pr. 1426; Ord. XXXI. 4, 12, 13.

(*v*) See Dan. Pr. 1425. As to the material contents of the bill, see *ib.*

(*x*) *Cooke* v. *Hathway*, V. C. M. May, 1868. For order in like case, see *Thomas* v. *Rawlings*, M. R. 9 July, 1864, Reg. Lib. B. 1791. As to the application for leave to file, and the evidence in support, see Dan. Pr. 1423.

Formal parts: see ante, No. 55.

1720. Notice of motion, to take bill off the file, where filed without leave (*y*).

on the part of the defendant A. B., that the bill filed in this cause on the —— day of ——, 187—, may be taken off the file of this Court for irregularity: with costs to be paid by the plaintiff to the said defendant.

SECTION VI.—BILLS TO IMPEACH DECREES FOR FRAUD (*z*).

1721. Formal parts of bill (*a*).

The formal parts of a bill to impeach a decree for fraud are the same as those of an original bill: as to which see *ante*, No. 154, *et seq.*

SECTION VII.—BILLS TO CARRY DECREES INTO EXECUTION (*b*).

1722. Formal parts of bill (*c*).

The formal parts of a bill to carry a decree into execution are the same as those of an original bill: as to which see *ante*, No. 154, *et seq.*

SECTION VIII.—BILLS FOR A WRIT OF CERTIORARI (*d*).

1723. Formal parts of bill (*e*).

The formal parts of a bill for a writ of *certiorari* are the same as those of an original bill: as to which see *ante*, No. 154, *et seq.*

1724. Bond to be given on filing the bill (*f*).

Know all men by these presents that we (*Continue as in* No. 81, *ante, to the end of the obligation: but*

(*y*) See Dan. Pr. 1424; Ord. XXXI. 11. For order in like case, see *Davis* v. *Bluck*, M. R. 1 Aug. 1843, Reg. Lib. A. 1852: 6 Beav. 393.

(*z*) As to bills of this description, see Dan. Pr. 1428, 1429; Adams on Eq. 415; Coop. Eq. Pl. 96; Harr. by Newl. 91; Ld. Red. 447; Story Eq. Pl. s. 426; Welford Eq. Pl. 246; and for form of such a bill, see Willis Eq. Pl. 381.

(*a*) See Dan. Pr. 1429. The bill must state the decree, and the proceedings which led to it: with the circumstances of fraud on which it is impeached: *ib.*

(*b*) As to bills of this description, see Dan. Pr. 1429—1430; Adams on Eq. 415; Coop. Eq. Pl. 98; Harr. by Newl. 93; Story Eq. Pl. s. 429; Welford Eq. Pl. 249; and for forms of such bills, see 1 Van Hey. 575; Willis Eq. Pl. 391.

(*c*) See Dan. Pr. 1429.

(*d*) As to *certiorari* bills, see Dan. Pr. 1430—1433; Coop. Eq. Pl. 50; Harr. by Newl. 49; Ld. Red. 60; 1 Mad. Pr. 249, 3rd ed.; Story Eq. Pl. ss. 18, 293; 1 Van Hey. 131, n. (2); Welford Eq. Pl. 158; 1 Grant's Pr. 58; and for forms of such bills, see 1 Van Hey. 131; Whitworth Eq. Pr. 22; Willis Eq. Pl. 12, 309.

(*e*) See Dan. Pr. 1430.

(*f*) See Dan. Pr. 1431. The bond must be lodged at the Record and Writ Clerks' office: *ib.*

substitute, "The Right Honourable John, Lord Romilly, the Master of the Rolls," *for* "E. F., esquire, one of the Clerks of Records and Writs of Her Majesty's High Court of Chancery".)

Whereas A. B. lately exhibited his bill of complaint in her Majesty's High Court of Chancery against C. D. and E. F., defendants, touching the matters therein contained:

Now the condition of the above written obligation is such, that if the bill so exhibited by the said A. B., contains matter sufficient to bear a *certiorari*, and if the said A. B. shall prove the suggestion of his said bill within fourteen days after the return of the writ of *certiorari* prayed by the said bill, then the above written obligation is to be void: or else to remain in full force and virtue.

(*Signatures and attestation: as in* No. 81, *ante*.)

1725.

Motion paper, for order directing the writ to issue (*g*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that a writ of *certiorari* may issue, directed to the Lord Mayor of the City of London, and his brethren the Aldermen thereof [*or as may be*], to certify and remove the bill of complaint in the plaintiff's bill mentioned, with the process and all proceedings thereon, into this Court.

The Record and Writ Clerks' certificate of filing the bill, and affidavits verifying the statements in the bill, accompany (*h*).

1726.

Præcipe for the writ (*i*).

In Chancery.

A. B. v. C. D. } Seal a writ of *certiorari*, directed to the Lord Mayor of the City of London, and his brethren the Aldermen of the same city [*or as may be*], commanding them that the petition or bill of C. D. against A. B., with all things touching the same in their custody, be sent into her Majesty's High Court of Chancery.

Returnable immediately.

Order dated —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

(*g*) See Dan. Pr. 1431. For order in like case, see *Davies* v. *MacHenry*, L. C. 25 Nov. 1867, Reg. Lib. A. 2558: Law Rep. 3 Ch. 200, 201, L. C.: which also directed substituted service of the bill and of the writ on the defendant's solicitor.

(*h*) See Dan. Pr. 1431. For form of certificate, see *post*, No. 1774.

(*i*) See Dan. Pr. 1431; and see *ante*, No. 312, n. (*c*). The writ will be sealed at the Record and Writ Clerks' office, on production of the order directing it to issue: see Dan. Pr. 1431.

1727.
The writ (*k*).

Victoria (*&c. : see ante*, No. 313).

To the Lord Mayor of the City of London, and his brethren the Aldermen of the same City [*or as may be*], greeting :

We, willing for certain causes to be certified of and upon a certain petition or bill of complaint before you against A. B. (*Name of the defendant to the bill filed in the Inferior Court*), at the suit of C. D. (*Name of the plaintiff to such bill*), lately exhibited and now depending, command you that the petition or bill aforesaid, with all things touching the same, by whatsoever names the parties aforesaid or any or either of them are or is set down, before us in our Chancery, truly, fully and exactly as in your custody they now remain under your seals, distinctly and openly ye send immediately, and this writ : that further that we may cause to be done that which of right ought to be done. Witness (*&c. : Conclude as in* No. 313, *ante*).

ROMILLY, M. R.

E. F.,
C. R. & W.

1728.
Indorsement on the writ (*l*).

By the Lord High Chancellor of Great Britain.

In the matter of (*Name of the plaintiff to the certiorari bill*).

(*Name, &c., of solicitor or party issuing the writ : see ante, No.* 4, *or* 7.)

1729.
Formal parts of return to the writ (*m*).

(1) *To be endorsed on the writ :* The execution of this writ appears in the schedule annexed :

The answer of G. H., Lord Mayor, and the Aldermen of the City of London [*or as may be*].

(2) *Schedule, to be annexed to the writ :*

London (to wit) : We the Right Honorable G. H., Lord Mayor, and the Aldermen, of the City of London [*or as may be*], to the Lord High Chancellor of Great Britain do certify : that before the coming of this writ to us directed, and to this schedule annexed, (to wit) on the —— day of —— (*Date of filing of petition or bill in the Inferior Court*), C. D. (*Name of plaintiff to the petition or*

(*k*) See Dan. Pr. 1431. The writ must be stamped with a Chancery fee fund stamp of 20*s.* : Regul. to Ord. Sched. 4 ; *ante*, No. 1554 (5). As to the service of the writ, see Dan. Pr. 1431 ; and for a case where substituted service was directed, see *ante*, No. 1725, n. (*g*).

(*l*) See Dan. Pr. 1431.

(*m*) *Ibid.*, 1433.

bill filed in the Inferior Court), in the said writ named, in his own proper person, came here into the Court of our Lady the Queen, holden before the said Mayor and Aldermen [*or as may be*], in the chambers of the Guildhall in the said City [*or as may be*], and then and there, according to the custom of the said City, exhibited a certain petition or bill of complaint against A. B. (*Name of the defendant to the petition or bill filed in the Inferior Court*), in the said writ also named; and which petition or bill of complaint is hereunto annexed (*n*).

(*Seal of the Inferior Court.*)

1730.

Motion paper, for an order that the writ, and proceedings returned therewith, may be filed of record (*o*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that the writ of *certiorari* herein, and the proceedings returned therewith from the Mayor's Court of the City of London [*or as may be*], in a suit of D. v. B. instituted in that Court by the defendant in this cause against the plaintiff herein, may be filed on the records of this Court.

If the incompetency of the Inferior Court appears on the face of the proceedings, add:

And that the said proceedings may be retained in this Court.

But if the incompetency does not so appear, add:

And that an inquiry may be directed (*p*) whether the plaintiff is able to prove the suggestions made in his bill filed in this cause.

The order dated ——, 187—, directing the writ to issue, and the writ and return thereto, accompany.

1731.

Summons for further time to prosecute the inquiry (*q*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that he may have —— days further time to prove the suggestions made in his bill filed in this cause, in answer to the inquiry directed by the order made therein, dated the ——, 187—.

(*n*) In *Hey* v. *Bate* (returned to the writ issued in *Jones* v. *Hey* (1869, J. No. 82)), the schedule was continued, by stating another proceeding touching the cause: namely, an order for, and attachment, for not answering. The order was not annexed, but was set out, *verbatim*. In all cases the original record of the petition or bill is returned from the Inferior Court.

(*o*) See Dan. Pr. 1432. For order in like case, see *Davies* v. *Mac Henry*, V. C. W. 11 Jan. 1868, Reg. Lib. A. 41.

(*p*) As to the mode of prosecuting the inquiry, see Dan. Pr. 1432. For form of summons to proceed with the inquiry, see *ante*, No. 1226.

(*q*) See Dan. Pr. 1432.

1732.

Motion paper, for order to retain the cause after inquiry (*r*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff, that the proceedings in D. v. B., instituted in the Mayor's Court of the City of London [*or as may be*], and returned under a writ of *certiorari*, may be retained in this Court.

Order dated ——, 187—, directing inquiry, and Chief Clerk's certificate of result, accompany.

(*r*) See Dan. Pr. 1432. For order in like case, on adjournment into Court of summons to vary the Chief Clerks' certificate, see *Davies* v. *Mac Henry*, V. C. W. 31 Jan. 1868, Reg. Lib. A. 202. As to the transfer to the High Court of funds paid into the Inferior Court: see Dan. Pr. 1433. As to the course where the suggestions are not proved, see *ib.*

CHAPTER XXXV.

MOTIONS AND PETITIONS, AND ORDERS THEREON.

Section I.—Generally (*a*).

1733.

Notice of motion, to discharge an order for irregularity (*b*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B. [*or as may be*], that the order made in this cause [*Or*, matter] by his lordship the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—, on the application of the plaintiff [*or as may be*], whereby it was ordered that, *&c.*, may be discharged for irregularity: on the ground that (*State what* (*c*)): with costs to be paid by the said plaintiff [*or as may be*], to the said A. B.

Section II.—Motions (*d*).

1734.

Indorsement of a motion paper (*e*).

The same as No. 53, *ante*.

1735.

Motion paper, to make absolute an order *nisi* (*f*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that the annexed order *nisi*, dated ——, 187—, may be made absolute.

An affidavit in support accompanies.

(*a*) See Dan. Pr. 1434—1437. For lists of applications which may be made by *ex parte* motion, and motion of course, see Dan. Pr. Appx. I.; by petition of course, *ib.* Appx. II.; and by summons, *ib.* Appx. III. As to the branch of the Court to which an application by motion or petition should be made, see Ord. VI. 5, 6, 9; Dan. Pr. 320, 324, 325, 1435. As to the power of a Judge to make special orders in causes and matters not attached to his branch of the Court, see Ord. VI. 11; Dan. Pr. 848.

(*b*) See Dan. Pr. 1436. As to irregular orders, see *ib.* 1437—1451.

(*c*) It is usual, but not necessary, to state the ground of the application: Dan. Pr. 1441.

(*d*) See Dan. Pr. 1437—1451; and *sup.* n. (*a*).

(*e*) See Dan. Pr. 1438; and notes to No. 53, *ante*. For various forms of description of the special object of the motion, see *Index*, Motion Paper.

(*f*) See Dan. Pr. 1439.

1736. Affidavit of service of order *nisi* (*g*).

The same as No. 48, *or* 929, *ante*.

1737. Formal parts of a notice of motion (*h*).

The same as No. 55, *ante*.

1738. Motion paper, for substituted service of a notice of motion (*i*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], that service of the annexed notice of motion upon (*Describe the proposed substitute; as thus:*

C. D., of (*residence and addition*),

Or, C. D., and E. F., members of the firm of D. and F., of (*Place of business, and addition*), or upon either of them),

may be deemed good service on the defendant A. B. [*or as may be*].

An affidavit in support accompanies.

1739. Affidavit of service of a notice of motion (*k*).

The same as No. 47, *or* 51, *ante*.

1740. Indorsement on brief on a special motion (*l*).

The same as the indorsement on a brief for the hearing: see *ante*, No. 867 (2): substituting "on motion," for "on the hearing."

(*g*) See Dan. Pr. 1439. As to service of a decree or order, see Dan. Pr. 903—905, 1437., and notes to Nos. 48, 929, *ante*. As to enforcing orders, see Dan. Pr. 903, *et seq.*, 1437; and *ante*, No. 929, *et seq.*, and notes thereto.

(*h*) See Dan. Pr. 1439, 1440; and notes to No. 55, *ante*. For various forms of description of the special object of a notice of motion, see *Index*, NOTICE OF MOTION.

(*i*) See Dan. Pr. 1442. As to substituted service, see *ib.* 370, *et seq.*, 1442; and *ante*, Nos. 927, 928, and notes thereto; and as to service abroad, see Dan. Pr. 373, *et seq.*, 1442. For form of order, see Seton, 1246, No. 11.

(*k*) See Dan. Pr. 1443; and notes to Nos. 47, 51, *ante*.

(*l*) See Dan. Pr. 1444, n. (*s*). Counsel's brief will consist of the evidence in support of, and in opposition to the motion, and such observations as may be deemed necessary; a copy of the notice of motion must be annexed; and, in general, prints of the bill and answers should accompany: *ib.* As to the evidence on motions, see *ib.* 1444—1446. As to searching for affidavits, see *ib.* 1444. As to the manner of making motions, see Dan. Pr. 1444, 1446. For forms of orders on motion, see Seton, 36, 87. As to the fees payable on such orders, see *ante*, No. 1554 (3). As to drawing up, passing, and entering an order

1741.
Notice of motion, to discharge or vary an order on motion (*m*).

The same as No. 1626, *ante*.

Section III.—Petitions (*n*).

1742.
Formal parts of a petition of course (*o*).

The same as No. 56, *ante*.

1743.
Formal parts of a special petition (*o*).

The same as No. 57, *ante*.

1744.
Foot note thereto (*p*).

The same as No. 58, *ante*.

1745.
Consent to a petition (*q*).

The same as No. 59, *ante*.

1746.
Motion paper, for substituted service of a petition (*r*)

Formal parts: see ante, No. 53.

To move on behalf of the petitioner, that service of his petition, presented on the ——, 187—, upon (*Conclude as in* No. 1738, *ante*).

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on motion, see Dan. Pr. 869, *et seq.*, 1450. As to the papers to be left on bespeaking the order, see Reg. Regul. 15 Mar. 1860, rr. 16, 31; Dan. Pr. 1450; and as to the costs of applications by motion, see Dan. Pr. 1447—1450; Seton, 91—94; Morgan & Davey, 31, *et seq.*; Ord. XL. 23.

(*m*) See Dan. Pr. 1450. As to appeals from orders on motion, see *ib.*; and *ante*, Nos. 1611, n. (*e*); 1626, n. (*d*).

(*n*) See Dan. Pr. 1451—1461; and *ante*, No. 1733, n. (*a*).

(*o*) See Dan. Pr. 1451; and notes to No. 56, *ante*. For forms of petitions in particular cases, see *Index*, Petition (of Course)—Petition (Special). For forms of titles of petitions presented under Acts of Parliament, see *post*, Chap. XLV., s. 1.

(*p*) See Dan. Pr. 1453; and note to No. 58, *ante*.

(*q*) See note to No. 59, *ante*.

(*r*) Dan. Pr. 1455. For order in like case, see *Bellis* v. *Jones*, V. C. S. 21 Dec. 1866, Reg. Lib. A. 2680. As to service of a petition, see Ord. III. 7, 8; XXXIV. 2; XXXVII. 2; Dan. Pr. 1454, 1455. As to substituted service, see Dan. Pr. 370, *et seq.*, 1455; and *ante*, Nos. 927, 928, and notes thereto. For form of order for substituted service, see Seton, 1241, No. 5.

1747.
Motion paper, for leave to serve a petition abroad (*s*).

Formal parts: see ante, No. 53.
To move on behalf of the petitioner, for leave to serve a copy of his petition, presented on the ——, 187—, upon A. B., at (*State where ; as thus :* Dublin, or elsewhere in Ireland).

1748.
Affidavit of service of, or of having been served with, a petition (*t*).

The same as No. 49, 51 *or* 52, *ante*.

1749.
Appointment of guardian *ad litem*, to a respondent under disability (*u*).

Motion paper :
Petition of course :
Affidavit in support :
} The same as Nos. 114—116, as to infants ; and 131—133 as to idiots, lunatics, and persons of unsound or weak mind.

Consent of guardian to act ; see *post*, No. 1979.

1750.
Indorsement on brief petition (*x*).

The same as the indorsement on a brief for the hearing : see *ante*, No. 867 (2) : substituting, " Brief petition—For the petitioner [*Or*, respondent A. B.]," for " Brief on the hearing—For the plaintiff [*Or*, defendant, A. B.]."

(*s*) See Dan. Pr. 1456. For order in like case, see *Re Wright*, V. C. M. 23 Mar. 1870, Reg. Lib. B. 724; and see Seton, 1245, No. 7. As to service abroad, see Dan. Pr. 373, *et seq.*, 1455, 1456.

(*t*) See Dan. Pr. 1458 ; and notes to Nos. 49, 51, 52, *ante*.

(*u*) See Dan. Pr. 1456 ; and notes to Nos. 114—116, 131—133, *ante*.

(*x*) See Dan. Pr. 1456. Counsel's brief will consist of a brief copy of the petition, and of the evidence on each side, together with such observations as may be deemed necessary : *ib.* As to the evidence on petitions, see Dan. Pr. 1456. For order for leave to read at the hearing of a petition the answer of a defendant, saving all just exceptions, see *Coles* v. *Alcock*, V. C. S., 17 Dec. 1866, Reg. Lib. A. 2710. As to setting down and hearing petitions, see Dan. Pr. 1456. As to drawing up, passing, and entering an order on petition, see *ib.* 1458. As to the papers to be left with the Registrar on bespeaking the order, see *ib.* ; Reg. Regul. 15 Mar. 1860, rr. 16, 32. For forms of orders on petition, see Seton, 34, 87. For the fees payable thereon, see *ante*, No. 1554 (3. 7. 8). As to filing the petition, see Ord. XXIII. 23 ; Dan. Pr. 1458. As to the amendment of petitions, see Dan. Pr. 1459. As to applying to co-interested persons to join in the petition, see *ib.* 1460. As to discharging or varying orders on petition, see *ib.* 1461 ; and for form of petition in like case, see *ante*, No. 1613 ; and see notes thereto. As to the costs of applications by petition, see Dan. Pr. 1459—1461 ; Seton, 91, *et seq.* ; Morgan & Davey, 31 ; Ord. XLI. 32. For form of a bill of costs on petition, see Morgan & Davey, 490.

1751.

Request that a petition adjourned without day may be restored to the paper (*y*).

In Chancery.

(*Short title.*)

I request that the petition of A. B., presented on the ——, 187—, and directed on the ——, 187—, to stand over, may be restored to the paper of petitions of the Master of the Rolls [*Or*, Vice-Chancellor ——], for the next petition day. Dated this —— day of ——, 187—.

C. D., solicitor for the petitioner.

1752.

Request that a petition directed to stand over, or adjourned for further consideration, may be restored to the paper (*z*).

Formal parts: see ante, No. 1751.

I request that the petition of A. B., presented on the ——, 187—, and directed on the ——, 187—, to stand over [*Or*, the further consideration whereof was adjourned by the order dated the ——, 187—], may be placed in the paper of petitions of the Master of the Rolls [*Or*, Vice-Chancellor ——], for the next petition day.

1753.

Notice of restoration of petition (*a*).

Formal parts: see ante, No. 54.

Take notice, that the petition of A. B., presented (*&c.: as in* No. 1752), has this day been placed by the Registrar in the paper of petitions of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——], for the next petition day.

(*y*) See Dan. Pr. 1457; Reg. Regul. 15 Mar. 1860, r. 14. As to the adjournment of petitions, see Dan. Pr. 1188, 1189, 1457. For summons to proceed on a petition adjourned to Chambers, see *ante*, No. 1463; and see note thereto.

(*z*) See Dan. Pr. 1457.

(*a*) *Ibid.*, 1458.

CHAPTER XXXVI.

INJUNCTIONS AND RESTRAINING ORDERS.

SECTION I.—GENERALLY (*a*).

1754.
Prayer for injunction, in a bill (*b*).

That the defendant A. B. may be restrained, by the order and injunction of this honourable Court, from (*State what; as thus:* prosecuting the said action so commenced by him as aforesaid against the plaintiff; and that all the defendants may be respectively restrained, in like manner, from commencing or prosecuting any other action, or proceeding against the plaintiff, for the recovery of the rent now due from the plaintiff under the said lease, or any part thereof; or otherwise concerning the matters aforesaid).—*And see post,* Nos. 1758—1773.

1755.
Notice of administration decree, to a creditor proceeding at law (*c*).

In Chancery.

(*Title of the suit in equity, and reference to the record.*)

Take notice, that by a decree [*Or*, an order] dated the —— day of ——, 187—, made by his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——] in this suit: which has been instituted for the administration of the estate of A. B., late of, *&c.*, deceased: the usual accounts are directed to

(*a*) As to injunctions in equity, see Dan. Pr. 1462—1536; Add. Cont. 1103—1109; Drewry on Inj.; Eden on Inj.; Kerr on Inj.; Jeremy on Eq. 307; 2 L. C. Eq. 534—537, 1034—1037; Seton, 867—961; Story Eq. Jur. ss. 861—959. For the cases in which injunctions will not be granted, see Dan. Pr. 1468—1471. For the cases in which injunctions will be granted, see *ib.* 1471—1515; and see forms of orders in Seton, 867, *et seq.* As to provisional and perpetual injunctions, and restraining orders before decree, see Dan. Pr. 1462, 1514. As to awarding damages under 21 & 22 Vic. c. 27, s. 2, see Dan. Pr. 946, *et seq.*, 1008, *et seq.*, 1468, n. (*g*). As to the jurisdiction of the County Courts, see 28 & 29 Vic. c. 99, s. 1; 30 & 31 Vic. c. 142; Dan. Pr. 1463, n. (*j*); 1468, n. (*g*); *ib.* Chap. XLV. sec. 29; and *post,* Chap. XLV., sec. 29.

(*b*) See Dan. Pr. 1462, 1468. As to filing written bills in injunction cases, see 15 & 16 Vic. c. 86, s. 6; Ord. IX. 4; XL. 18; Dan. Pr. 323, 366, 1468; Kerr on Inj. 608; and *ante,* No. 154, *et seq.*

(*c*) See Dan. Pr. 1463, 1466.

be taken of the estate of the said A. B., including an account of his debts.

Take also notice, that: inasmuch as you, the under named C. D., can go in under the said decree [*Or*, order], and prove the debt, if any, alleged to be due to you from the estate of the said A. B., for the recovery whereof you have brought an action in her Majesty's Court of Queen's Bench [*or as may be*], against E. F., the executor [*Or*, administrator] of the said estate, and for the costs of the said action to this time: if you the said C. D., after the receipt of this notice, proceed with the said action, an application will be made to the High Court of Chancery to restrain you, your attornies and agents, from further prosecuting the said action, and to deprive you of the costs incurred therein subsequent to the receipt of this notice. Dated this —— day of ——, 187—.

G. H., of (*Place of business*), solicitor for the said E. F. [*or as may be*].

To the said C. D.; and to Mr. L. M., his attorney [*Or*, agent] in the said action.

1756.

Notice of motion, to restrain a creditor from proceeding at law, after an administration decree (*d*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*Or*, defendant E. F.]:

1. That C. D., his attornies and agents, may be restrained from further prosecuting the action brought by him in her Majesty's Court of Queen's Bench at Westminster [*or as may be*], against the defendant E. F. [*or as may be*], the executor [*Or*, administrator] of A. B., the testator [*Or*, intestate] in the pleadings of this cause named, to recover a debt alleged to be due to the said C. D. from the estate of the said A. B. [*or as may be*].

2. That the said C. D. may be at liberty to go in under the decree [*Or*, order] made in this cause dated the —— day of

(*d*) See Dan. Pr. 1466. For order in like case, see Seton, 882, No. 1; and for orders in analogous cases, see *ib.* 882, 883. A separate notice must be served on each creditor suing separately: Dan. Pr. 1466. For the cases in which a creditor will be restrained from proceeding at law, after a decree or order for the administration of assets, see *ib.* 1463—1467; Kerr on Inj. 107—118; and Seton, 882—887. As to staying proceedings at law, pending proceedings under 13 & 14 Vic. c. 35, and 23 and 24 Vic. c. 38, s. 14, see Dan. Pr. 1080, 1465; and for forms of notice of motion and summons, see *ante*, No. 1213. As to election between suit and action, see Dan. Pr. 718, *et seq.*, 1467; Seton, 947; Kerr on Inj. 103; and *ante*, Nos. 685—690, and notes thereto. As to restraining action arising out of decree, or of process of contempt improperly issued, see Dan. Pr. 435, 1467. As to staying concurrent suits after decree, see Seton, 887—890; Dan. Pr. 698, *et seq.*; and see *ante*, No. 674. As to proceedings at law against executors and administrators, see Chitty's Arch. 1227, *et seq.*, 1854; Trower, 285, *et seq.*; Williams' Exors. 1782—1851, 2009, 2010. As to attachment of debts, and garnishee orders, see 17 & 18 Vic. c. 125, . 61; Chitty's Arch. 712, *et seq.*

——, 187—, and prove the claim for which the said action is brought.

Where assets admitted (*e*) *:* 3. That upon the said C. D. establishing his said claim, the defendant E. F. [*or as may be*] may be at liberty, out of the assets of the said A. B., to pay to the said C. D. his costs of the said action, up to the time he had notice of the said decree [*Or*, order] : to be taxed.

Or, where assets denied (*e*) *:* 3. That the costs of the said C. D. of the said action, up to the time he had notice of the said decree [*Or*, order], and his costs of this application, may be taxed ; and that he may be at liberty to add the amount thereof to his said claim, and to prove for the same under the said decree [*Or*, order].

1757. Affidavit by the personal representative, and his solicitor, in support of motion to restrain creditor at law (*f*).

In Chancery.

(*Title, and reference to the record.*)

We, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the defendant E. F.,

If so : and also his attorney in the action hereinafter mentioned,

and E. F., of (*residence and addition*), the above named defendant, severally make oath and say :

And first, I the said G. H. for myself say, as follows :

1. On the —— day of ——, 187—, C. D. brought an action in her Majesty's Court of Queen's Bench at Westminster [*or as may be*], against the said defendant E. F., as the executor [*Or*, administrator] of A. B., the testator [*Or*, intestate] in the pleadings of this cause named, to recover the sum of £——, alleged to be due to the said C. D. from the estate of the said A. B. [*or as may be*].

2. *State, concisely, the material proceedings in the action ; as thus :* The said E. F. duly appeared to the said action ; and issue has been joined therein, and notice of trial given for the next summer assizes to be holden at ——, in the county of ——.

3. The suit in which this affidavit is made was instituted on the —— day of ——, 187—, by a creditor of the said A. B. [*or as may be*] for the administration of the estate of the said A. B.

4. By the decree [*Or*, order] dated the —— day of ——, 187—, made on the hearing of the said suit, the usual accounts are directed to be taken of the estate of the said A. B. : including an account of his debts.

5. *Prove service on the plaintiff at law of notice of the decree or order : see ante*, No. 47.

And I the said E. F. for myself say, as follows :

6. The only assets of the said A. B. now in my hands consist

(*e*) As to the costs, see Dan. Pr. 1466.

(*f*) See Dan. Pr. 1466. Where assets are admitted, it is presumed the personal representative need not make an affidavit.

of (*State what; as:* the sum of £—— cash); and such assets are insufficient, in a due course of administration, to pay the claim of the said A. B, in the said action, and his costs thereof [*or as may be*].

Sworn (*&c.: see ante*, No. 13).

Section II.—On Interlocutory Applications (*g*).

1758.

General form of notice of motion for an injunction (*h*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the defendant A. B., his

Or, defendants A. B., C. D., *&c.*, their, and each of their, attornies and agents;

Or, officers, contractors, servants, workmen, and agents [*or as may be* (*i*)],

may be restrained, by the order and injunction of this honourable Court, from (*State what: For examples, see post*, Nos. 1759—1773): until the hearing of this cause [*or as may be* (*k*)], or until further order.

1759.

Notice of motion, to restrain action at law (*l*).

Proceed as in No. 1758, *ante, to* Court,

from proceeding in the action at law commenced by the said defendant T. T. against the plaintiffs, as in the plaintiffs' bill mentioned; and from commencing or prosecuting any other action or suit, or other proceeding, against the plaintiffs, or either of them, for the recovery of the mortgage debenture in the bill mentioned: until further order.

(*g*) See Dan. Pr. 1516—1530.

(*h*) *Ibid.*, 1519; Kerr on Inj. 611. As to the form of the notice, see Dan. Pr. 1519, 1524; and see *ib.* 1442, 1443. As to the service, see Dan. Pr. 1442, 1520; Ord. III. 8; Kerr on Inj. 609, 610; and as to substituted service, see *post*, No. 1775. As to turning the motion into a motion for decree, see Dan. Pr. 1523; and for form of order in such case, see Seton, 868. As to the form of the order for an injunction, see Dan. Pr. 1523; Seton, 867, *et seq.*

(*i*) See Dan. Pr. 1524; Kerr on Inj. 624, 643.

(*k*) See Dan. Pr. 1523.

(*l*) See *Sheppard* v. *Turner*, V. C. S. 8 May, 1866, Reg. Lib. B. 889. As to writs of injunction at law, see Dan. Pr. 1489; Chitty's Arch. 1113, *et seq.*, 1861; Kerr on Inj. 232—234. As to compelling discovery at law, see Dan. Pr. 1473; Chitty's Arch. 1423, *et seq.*, 1837. As to equitable defences at law, see Chitty's Arch. 252, *et seq.*, 1038. As to staying proceedings in other Courts, see:—*Generally:* Dan. Pr. 1471—1476; Seton, 874—882.—*Admiralty Court:* Dan. Pr. 1474; Kerr on Inj. 148—151.—*Bankruptcy Court:* Dan. Pr. 1474; Kerr on Inj. 153, 583—586.—*Common Law Courts:* Dan. Pr. 1471—1473.—*County Courts:* Kerr on Inj. 153.—*Court of Chancery:* Dan. Pr. 1475.—*Divorce Court:* Dan. Pr. 1474; Kerr on Inj. 151.—*Foreign Courts:* Dan. Pr.

1760.
Notice of motion, to restrain interference with ancient lights (*m*).

Proceed as in No. 1758, *ante, to* Court,
from continuing to erect or raise the walls or building, now in course of erection by the defendants to the north of the plaintiff's premises, in the bill mentioned, to a greater height than the same wall or building now is: until, *&c.*

1761.
Notice of motion, to restrain sale of goods under a bill of sale (*n*).

Proceed as in No. 1758, *ante, to* Court,
from selling, offering for sale, dealing with, or disposing of, any of the goods and chattels mentioned or referred to in the bill of sale in the plaintiff's bill mentioned: until, *&c.*

1762.
Notice of motion, to restrain infringement of copyright (*o*).

Proceed as in No. 1758, *ante, to* Court,
from printing, publishing, selling, or otherwise circulating such portion of the defendant's works, intituled "Mineral Statistics of the United Kingdom of Great Britain and Ireland, for the year 1865," in the plaintiff's bill mentioned, as is set forth in the statistics contained in the annual statements or publications published by, or on behalf of, the plaintiff, as in the plaintiff's bill mentioned; and from doing any other act or thing in invasion or infringement of the plaintiff's copyright in the said annual statements or publications, or any of them: until, *&c.*

1475; Kerr on Inj. 154—160.—*Lord Mayor's Court: Re Inns of Court Hotel Company, Limited,* V. C. W. 20 Dec. 1866, Reg. Lib. A. 2671; Kerr on Inj. 152.—*Probate Court:* Dan. Pr. 1474; Dodd & Brooks, 905, *et seq.;* Kerr on Inj. 152, 162.

(*m*) See *Back* v. *Inns of Court Hotel Company, Limited,* V. C. W. 24 March, 1865, Reg. Lib. A. 488; and see *Waterson* v. *Fowler,* V. C. S. 21 Dec. 1865. Reg. Lib. B. 2437. As to interference with ancient lights, watercourses, and other easements, see Dan. Pr., 1485, *et seq.;* and see Add. Wrongs, 75—154; Broom Com. Law, 753—789; Dixon, 54—75; Gale, xi.—xiv., 584 598; Kerr on Inj. 350—366, 377—397; L. C. Conv. 139—189, 931—938; Seton, 894, 898, 901, 902, 924; Sugd. Stat. 161—183; Woodfall, 597—657. As to injunctions to protect legal rights, see Kerr on Inj. 196—216; and as to the jurisdiction at law, see Dan. Pr. 1489.

(*n*) *Woollatt* v. *Sinclair,* M. R. 1 Jan., 1869, Reg. Lib. B. 11; and see Dan. Pr. 1501.

(*o*) See *Scott* v. *Stanford,* V. C. W. 7 Feb. 1867, Reg. Lib. B. 528 (at the hearing): Law Rep. 3 Eq. 718, V. C. W.; Dan. Pr. 1494, 1521. As to injunctions in copyright cases, see Dan. Pr. 1491—1497; Kerr on Inj. 439—472. For a list of the statutes relating to copyright, see Dan. Pr. 1491, n. (*t*); Biddle's Table of Statutes, 50, 51, ed. 2. For a collection of cases in equity as to injunctions relating to copyright, with forms of orders, see Seton, 905—909; and see Phillips on Copyright.

1763.
The like (*p*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that the defendant, his printers and publishers, and his and their agents, servants and workmen, may be restrained by, *&c.*, from further printing, publishing, selling, delivering, or otherwise disposing of, the book called "London Lyrics, by F. L.," in the plaintiff's bill mentioned: printed and published for the defendant, as in the plaintiff's bill mentioned; or any copy or copies thereof; and from printing or publishing the book called "A selection from the works of F. L.," or any colourable imitation thereof: until, *&c.*

1764.
Notice of motion, to restrain execution for rent (*q*).

Proceed as in No. 1758, *ante, to* Court,
from taking any further proceedings, by distress or otherwise, to recover the rents and profits of the hereditaments and premises in the plaintiff's bill mentioned; and from putting in force and execution the distress levied by the defendant upon the goods and chattels of W. P., in the plaintiff's bill mentioned: until, *&c.*

1765.
Notice of motion, to restrain a local Board of Health from polluting a river (*r*).

Proceed as in No. 1758, *ante, to* Court,
from causing or permitting any sewage, or water polluted with sewage, to pass through the drains or channels under their control into the river C., in such manner as to render the water of the said river at or near the plaintiff's mill, in the bill mentioned, unfit for use by the plaintiff, or otherwise injurious to the health of the persons resident at the said mill: until, *&c.*

(*p*) *Moxon* v. *Locker*, V. C. J. 16 June, 1870, Reg. Lib. B. 1668.

(*q*) See *Hooper* v. *Campbell*, V. C. S. 10 July, 1865, Reg. Lib. A. 1308. For injunction to restrain removal of hay from a farm, see *Hunt* v. *Brown*, M. R. 9 Feb. 1864, Reg. Lib. A. 195. As to proceedings in equity, in disputes between landlord and tenant, see Woodfall, 932, *et seq.*; Kerr on Inj. 678. As to relief for non-payment of rent, see Dan. Pr. 1510; Chitty's Arch. 1066; Cole on Eject. 415, 418, 421; Kerr on Inj. 83, 84. As to relief for non-insurance, see Dan. Pr. 1511; Kerr on Inj. 87; Sugd. Stat. 312; Shelford's R. P. Acts, 685; and from penalties and forfeitures generally, see Dan. Pr. 1509, 1510; Kerr on Inj. 79—98, 539—540. As to restraining breaches of covenant, see Dan. Pr. 1504, *et seq.*

(*r*) For order in like case, see *Spokes* v. *Banbury Board of Health*, V. C. W. 1 Mar. 1865, Reg. Lib. B. 833: Law Rep. 1 Eq. 42, 51: 11 Jur. N. S. 1010; and for order for a sequestration on breach of the injunction, see S. C., *post*, No. 1791. As to nuisances, see Dan. Pr. 1482—1485; Add. Wrongs, 156—222; Broom Com. Law, 708—709; Kerr on Inj. 332—399; Woodfall, 762—764. For a collection of cases in equity, see Seton, 894, 898—900.

1766.
Notice of motion, to restrain the getting in of partnership assets, or intermeddling with the business (*s*).

Proceed as in No. 1758, *ante*, *to* Court,
from possessing himself of, getting in, or receiving, and from disposing of, charging, or incumbering, any part of the monies, credits, property, assets, estate or effects of, or belonging to the partnership business in the bill mentioned; and from incurring any debts or debt in respect of the said business, and from carrying on, or in any manner interfering in, or intermeddling with, the said business, or any of the monies, property, assets, or affairs thereof, without the consent of the plaintiff: until, *&c.*

1767.
Notice of motion, to restrain infringement of patent (*t*).

Proceed as in No. 1758, *ante*, *to* Court,
from making and selling, or making or selling, any blue or purple violet dye made according to the process discovered in the specification of the letters patent in the bill mentioned, or according to any process being a colourable imitation thereof; and from in any manner infringing the said letters patent: until, *&c.*

1768.
Notice of motion, to restrain a public company (*u*).

Proceed as in No. 1758, *ante*, *to* Court,
from prosecuting the actions of ejectment commenced by the defendants the I. R. Company, as in the plaintiff's bill mentioned, against the defendants the D. and S. R. Company, or either of such actions; and from commencing or prosecuting any other action or actions for obtaining possession of the lands purchased by the plaintiffs for the purposes of the said D. and S. R. Company: until, *&c.*

(*s*) See *Sterry* v. *Truss*, V. C. K. 18 Dec. 1865, Reg. Lib. B. 2401; and *Cowen* v. *Salomons*, M. R. 13 July, 1865, Reg. Lib. A. 1373. As to injunctions in suits between partners, see Dan. Pr. 1513; Kerr on Inj. 164—170; Lindley on Part. 1652—1654; and for cases and forms of orders, see Seton, 917, 918.

(*t*) See *Maule* v. *Eaton*, V. C. W. 3 May, 1866, Reg. Lib. A. 879; and for further order, making the injunction perpetual, see S. C., V. C. W. 8 Dec. 1866, Reg. Lib. B. 2671. As to injunctions in patent cases, see Dan. Pr. 1489—1491, 1521, 1531; Kerr. on Inj. 400—438. For a list of the statutes as to patents, see Dan. Pr. 1490, n. (*r*); Biddle's Table of Statutes, 129, ed. 2; and for a collection of cases in equity, as to injunctions relating to patents, with forms of orders, see Seton, 909—914; and see Carpmael's Law of Patents for Inventions. For form of bill in a patent case, see *post*, Chap. XLVI. As to injunction, inspection, and account at law, see 15 & 16 Vic. c. 83, s. 42; Chitty's Arch. 1861, 1863, 1864.

(*u*) See *Pickering* v. *Ilfracombe Railway Company*, V. C. S. 21 Dec. 1866, Reg. Lib. B. 2648. As to injunctions against incorporated and other companies, see Dan. Pr. 1499; Kerr on Inj. 295—329, 540—569; and see cases collected in Seton, 926, *et seq.*; 929, *et seq.*; and for forms of orders, see *ib.* 925, *et seq.*; 928, *et seq.*

1769.

Notice of motion, to restrain the transfer of a ship's register, and sailing of the ship (*x*).

Proceed as in No. 1758, *ante, to* Court,
from transferring on the register the ship marked or called No. 4, in the bill mentioned, to any person or persons; and also to restrain the said defendant, his servants and agents, from removing the said ship out of the jurisdiction of this Court: until, *&c.*

1770.

Notice of motion, to restrain transfer of stock, and payment of dividends (*y*).

Proceed as in No. 1758, *ante, to* Court,
from transferring the £——, bank 3*l.* per cent. annuities, standing in their names in the books of the Bank of England, or any part thereof, and from receiving the dividends and interest due or to accrue due thereon; and that the Governor and Company of the Bank of England may be restrained from permitting such transfer, and from paying such dividends and interest: until, *&c.*

1771.

Notice of motion, to restrain infringement of trade mark (*z*).

Proceed as in No. 1758, *ante, to* Court,
from affixing, or causing to be affixed, to any casks of wine shipped to their, or any of their order, or used by them, or any of them, the brand or mark of a crown, and the word Seixo, or any other combination of marks or words so contrived as, by colourable imitation, or otherwise, to represent the marks or brands used by the plaintiff; and from employing, or permitting to be employed, any marks or brands, or words or other designation, in respect of wines offered for sale by the defendants, or any of them, which shall be so contrived as to represent, or to induce a belief, that such wines are Crown Seixo, or the produce of the quinta do Seixo, in the plaintiff's bill mentioned; and also from describing, or offering for sale, the wines simply as Seixo wine; or otherwise using the word Seixo in respect of such wine, without clearly distinguishing the same from wine produced on the plaintiff's said quinta do Seixo: until, *&c.*

(*x*) *Borman* v. *Wilmett*, V. C. W. 17 Mar. 1865, Reg. Lib. A. 513. As to injunctions to restrain the improper employment of a ship, or indorsement of the register, see Dan. Pr. 1503; Kerr. on Inj. 600—601. For a collection of cases as to injunctions respecting ships, and forms of orders, see Seton, 932—936.

(*y*) *Sullivan* v. *Plimpton*, V. C. M. 11 Jan. 1869, Reg. Lib. B. 6; and see Dan. Pr. 1501.

(*z*) See *Seixo* v. *Provezende*, V. C. W., 17 Feb. 1865, Reg. Lib. B. 1067 (on motion for decree); Affd. L. C., 17 Jan. 1866, Reg. Lib. B. 199: Law. Rep. 1 Ch. 192: 12 Jur. N. S. 215. As to trade marks, see Merchandize Marks Act, 1862 (25 & 26 Vic. c. 88); Dan. Pr. 1497—1499, 1531; Kerr. on Inj. 474—491. For a collection of cases as to injunctions respecting trade marks, and forms of orders, see Seton, 914—917.

1772.
Notice of motion, to restrain marrying ward of Court (*a*).

Formal parts : see ante, No. 55.
on the part of the plaintiff [*or as may be*], that A. B., of, *&c.*, may be restrained, until further order, from intermarrying with the plaintiff C. D. [*or as may be*], and from having any intercourse or communication with the said C. D.

1773.
Notice of motion, to restrain the felling of timber (*b*).

Proceed as in No. 1758, *ante, to* Court,
from felling any timber or other trees standing or growing in the meadow, or in the hedge, in the plaintiff's bill mentioned ; and from cutting the said hedge, or the underwood thereof ; and from committing any other waste, or otherwise interfering with, the said meadow, or trees, or hedge : until, *&c.*

1774.
Certificate of bill filed (*c*).

Formal parts : see ante, No. 852.
These are to certify, that the plaintiff's bill in this cause was regularly filed on the —— day of ——, 187— :
If so : and that the same was duly amended on the —— day of ——, 187— :
as appears by my book.

1775.
Motion paper, for substituted service of copy bill, and notice of motion for an injunction (*d*).

Formal parts : see ante, No. 53.
To move on behalf of the plaintiff, that service of a printed copy of the plaintiff's bill, duly indorsed, together with a copy of the order hereon, upon A. B., at (*State where*), may be deemed good service upon the defendant C. D. ; and that the plaintiff may at the same time serve notice of motion for the —— day of ——, 187—, for an injunction in accordance with the prayer of the plaintiff's bill ; and that service of such notice upon the said A. B. may be deemed good service upon the defendant C. D.

(*a*) See *Dawson* v. *Thomson*, V. C. W. 28 Mar. 1865, Reg. Lib. A. 540. For order discharging order for committal of husband for marrying ward, on payment by him of the costs, see *Tredwell* v. *Gray*, V. C. K. at Chambers, 14 Dec. 1866, Reg. Lib. B. 2698. As to the protection of wards from removal or marriage, see Dan. Pr. 1197, 1207, 1513 ; Kerr. on Inj. 598 ; and *ante*, Nos. 1487—1490. For cases and forms of orders, see Seton, 713—721—732.

(*b*) For interim order in like case, see *Ridgway* v. *Ridgway*, V. C. W. 23 May, 1866, Reg. Lib. A. 901. As to waste and trespass, see Dan. Pr. 1476—1482 ; and see Add. Wrongs, 223—224, 254, *et seq.* ; Kerr. on Inj. 234—286, 295—329 ; L. C. Conv. 90—97, 1011—1013 ; 1 L. C. Eq. 559, 624, 896—898 ; 2 Spence, Eq. Jur. 570 ; Story, Eq. Jur. s. 515 ; Woodfall, 503. For a collection of cases and forms of orders for injunctions, see Seton, 890—897.

(*c*) See Braithwaite's Pr. 408 ; Dan. Pr. 1520. As to filing written bills, and serving written copies, in injunction cases, see Dan. Pr. 323, 336, 1468, 1520, n. (*r*) ; 15 & 16 Vic. c. 86, s. 6.

(*d*) See *Caulfield* v. *Elliott*, V. C. S. 15 Dec. 1865, Reg. Lib. A. 2367. As

1776.

Motion paper, to apply for an interim order, &c. (*e*).

Formal parts: see ante, No. 53.

To apply on behalf of the plaintiff, for an interim order in the terms of the 4th paragraph of the plaintiff's bill, until after ——, the —— day of —— ; and for leave to serve notice of motion for that day, with the bill, before appearance [*or as may be*].

1777.

Interim order, on undertaking as to damages (*f*).

Date, title, and introduction.

And the plaintiff, by his counsel, undertaking to abide by any order this Court may make as to damages, in case the Court shall hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay, This Court doth order, that the defendant T. A. P. be restrained, until Saturday, the 2nd day of September next, from obtaining any payment, *&c., &c.;* and the plaintiff is to be at liberty to serve the defendant with the bill, and also, before appearance, with notice of a motion to be made before this Court on Friday, the 1st day of September next, at the Sessions House at W., in the county of S.

1778.

Summons for leave to amend bill, without prejudice to (notice of motion for) injunction (*g*).

See ante, No. 231.

1779.

Summons for time to file affidavits on motion for injunction, and serve notice of motion for decree (*h*).

Formal parts : see ante, No. 60.

on the part of the defendants, that the time within which the applicants may file their affidavits on the plaintiff's motion for

to substituted service, see Dan. Pr. 370, *et seq.*, 1442, 1518, 1520; Kerr. on Inj. 609; and *ante*, Nos. 927, 928, and notes thereto.

(*e*) See Dan. Pr. 1519, 1520. In vacation, where the brief and other papers are forwarded to the Vacation Judge, instead of counsel attending him, the brief is indorsed by counsel to the following effect: "I think this is a proper case for an application to the Vacation Judge; and I apply for an order to the above effect.—A. B."

(*f*) *Klingender* v. *Patteson*, V. C. W. 24 Aug. 1865, Reg. Lib. A. 1938; and see *Isle of Wight Ferry Company* v. *Pearson*, V. C. W. 10 July, 1865, Reg. Lib. A. 1308. As to interim orders, see Dan. Pr. 1518; Kerr. on Inj. 619; and Seton, 867, 870. As to the mode of giving the undertaking in vacation, see Dan. Pr. 1519; and see Seton, 867, No. 3. As to undertakings and assessments of damages, see Dan. Pr. 1519, 1524, 1528; and see Kerr. on Inj. 621. For form of order for inquiry as to damages, see Seton, 868, No. 5.

(*g*) See Dan. Pr. 349, 1523; Kerr. on Inj. 616; and *ante*, No. 231, nn. (*m*), (*n*).

(*h*) See *Hallows* v. *Fernie*, V. C. W. at Chambers, 13 Dec. 1865, Reg. Lib.

an injunction may be enlarged until the —— day of ——, 187—; and that the time within which the plaintiff may file affidavits in reply, and serve notice of motion for a decree, may be enlarged until the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

1780.

Notice of injunction having been granted (*i*).

Formal parts: see ante, No. 54.

Take notice, that his lordship the Master of the Rolls [*or as may be*] has this day granted an injunction [*Or*, made an order that an injunction be awarded] in this cause, to (*State terms of injunction or order*).

And take also notice, that the said injunction will be issued [*Or*, that the said order will be drawn up], and served upon you, as soon as practicable.

1781.

Writ of injunction (*k*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert the names of the person or persons against whom the injunction is awarded; and, if so in the decree or order, add:* "and his servants, agents, and workmen"—*or as may be*].

Whereas

If awarded by decree or decretal order, say (*l*): by a certain decree [*Or*, order] made by us in our High Court of Chancery on the —— day of ——, 187— (*Date of decree or order*),

But if awarded on motion, say: upon motion made unto us in our High Court of Chancery, before the Right Honourable the Master of the Rolls [*or as may be*] on

A. 2519. As to the evidence on motions for injunctions, the title and form of the affidavits, having the office copies in Court, and furnishing copies of the affidavits in *ex parte* applications, see Dan. Pr. 1520—1522; Ord. XXXVI. 4, 9; Kerr on Inj. 612—618; and *ante*, No. 1542.

(*i*) See Dan. Pr. 1525, 1533; Kerr on Inj. 625; Braithwaite's Pr. 229. As to serving a copy of the Registrar's minutes of the order, see Dan. Pr. 1525.

(*k*) See Dan. Pr. 1525; Braithwaite's Pr. 225; Kerr on Inj. 625. The writ must be written on parchment, in words at length; and a Chancery fee fund stamp of 20*s.* must be affixed to it: see *ante*, No. 1554 (5). The writ must be signed by one of the Clerks of Records and Writs, and sealed with the seal of that office; and at the time the writ is presented for sealing, a docket thereof (*post*, No. 1783) must be left, and the decree or order awarding the injunction, or an office copy thereof, must be produced: Dan. Pr. 1525. The order, or office copy, is usually returned by the Record and Writ Clerk to the solicitor, on his giving a receipt for it on the back of the docket: *ib.* n. (*z*). Every copy for service of the writ should be a full copy, including the signature of the Record and Writ Clerk; and should be indorsed in like manner as the original: Dan. Pr. 1526. As to the mode of service, see Dan. Pr. 1526, 1533; Kerr on Inj. 625. As to substituted service, see Dan. Pr. 905, 1526; Kerr on Inj. 625.

(*l*) As to granting injunctions at the hearing, see Dan. Pr. 1530—1533.

the —— day of ——, 187— (*Date of the order*), by counsel for the plaintiff,

in a cause wherein (*Insert title, as in the decree or order; as thus:* D. A. is plaintiff, and you, the said A. B., are defendant), and upon (*&c.: Set forth, in the past tense, the whole of the introductory portion of, or recitals in, the decree or order; and so much of the mandatory part thereof as relates to the injunction* (*m*)):

We, therefore (*n*), in consideration of the premises, do hereby

If perpetual, add: from henceforth, and for ever (*o*),

strictly enjoin and restrain you, the said A. B. (*If so in decree or order, add:* your servants, agents, and workmen—*or as may be*), under the penalty of £—— (*Insert any nominal amount: usually double the estimated amount or value of the property in question in the suit, or of the estimated damage*), to be levied upon your (*If more than one, add:* and each and every of your) lands, goods, and chattels to our use, from (*Repeat the mandatory part of the decree or order relating to the injunction.*

Witness (*&c.: Conclude as in* No. 313, *ante*).

1782.

Indorsement on writ of injunction (*p*).

By the Lord High Chancellor of Great Britain.

Injunction.

C. A.

v.

A. B.

Romilly, M. R.

(*Add name, &c., of solicitor or party issuing the writ: see ante,* No. 4, *or* 7.)

(*m*) In so doing, introduce "you" before the name of the party restrained, whenever it occurs; but, in the case of husband and wife, say, "you the said John Jones, and Mary Jones" not "you the said John Jones, and Mary your wife." Substitute also, "our said Court," for "this Court." If the decree or order relates to other matters than the injunction, so much only of the mandatory part as relates to the injunction need be recited; but, in such case, say: "It was (amongst other things) ordered," &c.; or, "our said Court did (amongst other things) order," &c. If, also, in the case of a motion, judgment was delivered, and the injunction awarded, on a day subsequent to that on which the motion was made, instead of the expression "The said Court did order that an injunction," &c., or its equivalent, say: "our said Court did, on the —— day of ——, order that an injunction," &c.

(*n*) If the injunction is awarded conditionally: for instance, upon payment of a sum of money into Court: recite the performance of the condition immediately before these words; as thus: "And whereas the said sum of £—— hath been duly paid into the Bank, with the privity of the Accountant-General of our said Court, to the credit of the said cause: as by the certificate of the said Accountant-General appears."

(*o*) As to perpetual injunctions, see Dan. Pr. 1530—1533; Kerr on Inj. 132—134, 224—230, 532—533.

(*p*) See Dan. Pr. 1525; Ord. III. 2, 5.

1783.
Docket (*q*).

The Queen, and so forth.

To (*Set out, verbatim, the whole of the injunction: from the direction, to* "Witness;" *and conclude thus:*)

Witness the Queen at Westminster, &c.

1784.
Notice of motion, to dissolve an interlocutory injunction (*r*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the injunction awarded by the order in this cause, dated the —— day of ——, 187—, may be dissolved.

1785.
Notice of motion, to discharge, for irregularity, order awarding injunction (*s*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that the order dated the —— day of ——, 187—, made in this cause, on the application of the plaintiff, whereby it was ordered that (*State what*), may be discharged for irregularity: with costs to be paid by the plaintiff to the said defendant.

Section III.—Continuing and Granting Injunctions at the Hearing (*t*).

1786.
Writ of perpetual injunction (*u*).

The same as Nos. 1781—1783, *ante*.

Section IV.—Consequences of the Breach of an Injunction, or Restraining Order (*x*).

1787.
Notice of motion, for committal for breach of injunction (*y*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the defendant A. B. may stand committed to the City prison at Holloway, for breach of the in-

(*q*) See Dan. Pr. 1525; Braithwaite's Pr. 229; and *ante*, No. 1781, n. (*k*). The docket may consist of an entire copy of the writ of injunction. The docket must be written on brief paper; and it answers the purpose of the *præcipe* required on issuing writs in other cases.

(*r*) See Dan. Pr. 1527. For order in like case, see Seton, 941, No. 1. As to applications to dissolve, see Dan. Pr. 1526—1529; Kerr on Inj. 626—632. As to obtaining leave to give short notice of the motion, see Dan. Pr. 1527; and *ante*, No. 55; and as to the evidence on, and hearing of, the application, Dan. Pr. 1528; 15 & 16 Vic. c. 86, s. 59.

(*s*) See Dan. Pr. 1523, 1536. As to when the motion should be made in this form, see *ib.* 1528; Kerr on Inj. 631.

(*t*) See Dan. Pr. 1530—1533; see also Kerr on Inj. 636, 637. For form of direction to continue injunction at the hearing, see Seton, 941, No. 2; 943, 944.

(*u*) See *ante*, No. 1781, n. (*o*).

(*x*) See Dan. Pr. 1533—1536; Kerr on Inj. 637—646.

(*y*) See Dan. Pr. 1534; Kerr on Inj. 639. For order in like case, see Seton,

junction granted pursuant to the order dated the —— day of ——, 187—,

Or, if writ not served, say: awarded to the plaintiff by the order dated the —— day of ——, 187—,

to restrain the said defendant from (*State what*);

If so: and for breach of the undertaking given by the said defendant on, *&c.*;

and that the said defendant may be ordered to pay the costs of this motion.

1788.

Motion paper, for order *nisi* to commit (*z*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, for an order *nisi* that the defendant A. B. (*Continue as in* No. 1787, *ante, to* on, *&c.*).

1789.

Affidavit in support of motion to commit (*z*).

Formal parts: see ante, No. 9.

1. *Prove service of notice of the injunction, or restraining order: see ante*, No. 47; *or if a writ of injunction has been served, prove service thereof; as thus:* I did on the —— day of ——, 187—, serve the above named defendant A. B. with the writ of injunction issuing out of, and under the seal of, this honourable Court, now produced and shown to me, and marked A. (*a*), by delivering a true copy of the said writ to, and leaving the same with, the said defendant A. B. personally at (*State where*); and I, at the same time, produced and showed to the said defendant A. B. the said original writ so under seal as aforesaid. At the time of the service aforesaid there was on the said original writ, and on the copy thereof so served as aforesaid, an indorsement in the words and figures following; that is to say: (*Set out a copy of the indorsement*).

2. *Prove that defendant has committed a breach.*

3. *Prove service of notice of motion, or of order nisi, for committal for the breach: see ante*, No. 47, or 48.

1790.

Motion paper, for substituted service of notice of motion, or order *nisi* (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff, that service of the annexed notice of motion [*Or*, order *nisi*, dated ——, 187—], upon (*Continue as in* No. 1738, *ante, to the end*).

945, No. 1. As to sequestration against a Peer or M.P. for a breach, see Dan. Pr. 1536; and *ante*, Nos. 1006—1012, and notes thereto; and against a corporation aggregate, see *post*, No. 1791.

(*z*) See Dan. Pr. 1535.

(*a*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*b*) See Dan. Pr. 153; and see *ante*, No. 1738, n. (*i*).

1791.
Notice of motion for a sequestration against a corporation aggregate, for breach of an injunction (*c*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that a commission of sequestration may issue, directed to certain commissioners to be therein named, to sequester the personal estate, and the rents, issues, and profits of the real estate, of the defendants the B. L. B. of H., until the further order of this Court; and that the said defendants may be ordered to pay to the plaintiff his costs of this application.

1792.
Notice of motion, for discharge from custody (*d*).

Formal parts: see ante, No. 55.
on the part of the defendant A. B., that upon his paying or tendering to the plaintiffs their costs of the order dated the —— day of ——, 187—, and the costs of his contempt, and of this application: such costs to be taxed by the Taxing Master in case the parties differ: the defendant A. B. may be discharged out of the custody of the Keeper of the City prison at Holloway as to his said contempt.

(*c*) For order in like case, see *Spokes* v. *Banbury Local Board of Health*, V. C. W. 25 Nov. 1865, Reg. Lib. B. 2452: Law Rep. 1 Eq. 42, 51: 11 Jur. N. S. 1010; and *ante*, No. 1765; and see Dan. Pr. 1535; Seton, 945, No. 2; and *ante*, Nos. 1015—1019.

(*d*) See Dan. Pr. 1536. For order in like case, see *Davenport* v. *Jepson*, V. C. W. 29 Jan. 1864, Reg. Lib. A. 84; and without costs, by consent, see *Heywood* v. *Wait*, V. C. M. 12 Nov. 1870, Reg. Lib. A. 2648.

CHAPTER XXXVII.

WRITS AND ORDERS IN THE NATURE OF INJUNCTIONS.

SECTION I.—RESTRAINING ORDERS, UNDER 5 VIC. C. 5, S. 4 (*a*).

1793.
Motion paper, for a restraining order (*b*).

In Chancery.
(*Name of Judge* (*c*)).

In the matter of the Act of Parliament, 5th Victoria, chapter 5, intituled "An Act to make further provisions for the administration of justice"; and in the matter of A. B.

Mr. C.

To move on behalf of the said A. B., of (*residence and addition*), for an order to restrain the Bank of England [*or as may be*] from permitting the transfer of £——, bank 3*l.* per cent. annuities [*or as may be*], standing in the name of C. D. in their books; and from paying any dividend due, or to become due thereon (*d*).

An affidavit in support accompanies.

1794.
Petition, for the like (*b*).

In Chancery.
(*Name of Judge* (*c*)).

(*Title, as in* No. 1793, *ante.*)

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the above named A. B., of (*residence and addition*).

Showeth as follows:

1. } (*Set forth, concisely, in numbered paragraphs, the circum-*
2. } *stances on which the petitioner relies to induce the Court to*
3. } *make the order.*)

Your petitioner therefore humbly prays, that the Governor and Company of the Bank of England [*or*

(*a*) As to restraining orders generally, see Dan. Pr. 1537—1540; 5 Vic. c. 5, s. 4; Seton, 920, 921. As to the contents of the affidavit in support of the application, see Dan. Pr. 1539; 1 Hare, 585, 586; 1 Y & C. C. C. 2. As to service of the order, see Dan. Pr. 1539.

(*b*) See Dan. Pr. 1538, 1539. The application is made *ex parte.*

(*c*) The motion paper or petition must be marked with the name of the Judge to whose Court the matter is to be attached: in the same manner as a bill: Dan. Pr. 324, 1539; Ord. VI. 6. As to marking a bill, see *ante,* No. 197.

(*d*) For other formal parts of the motion paper, see *ante,* No. 53.

as may be] may be restrained from permitting the transfer of the said £——, bank 3*l.* per cent. annuities [*or as may be*], and from paying any dividend due or to become due thereon, until further order.

And your petitioner will ever pray, &c.

1795.

Notice of motion, to discharge the order (*e*).

Formal parts: see ante, No. 55.

on the part of C. D., of (*residence and addition*), that the order in this matter dated the —— day of ——, 187—, whereby it was ordered that (*Recite the mandatory part of the order*), may be discharged: with costs to be paid by the said A. B. to the said C. D.

Section II.—Writ of Distringas (*f*).

1796.

Affidavit by the applicant, for the writ (*g*).

In Chancery.

(*Insert the name or names of the person or persons on whose behalf the writ is sued out; and, if the applicant is under disability, add a next friend* (*h*)*: as thus:*)

A. B., and C. D.

Or, A. B., an infant, by C. D., of (*residence and addition*), his next friend.

Or, A. B., a person of unsound mind, not so found, by C. D., of, *&c.* his next friend.

v.

The Governor and Company of the Bank of England [*or as may be*].

I, the above named A. B., of (*residence and addition*), do solemnly swear, that according to the best of my knowledge, information and belief, I am

If so: together with the above-named C. D., of (*residence and addition*),

beneficially interested in the stock hereinafter particularly described; that is to say: (*Here specify the amount of the stock to be*

(*e*) See Dan. Pr. 1539.

(*f*) As to the writ of distringas generally, see Dan. Pr. 1540—1543; 5 Vic. c. 5, s. 5; Ord. XXVII. 1, 2; Seton, 921; Braithwaite's Pr. 189—193. As to the present jurisdiction of the Court of Exchequer to issue this writ, see The Crown Suits, &c., Act, 1865 (28 & 29 Vic. c. 104), s. 27; and Reg. Gen. Exch. 11 Mar. 1866, r. 19: Law Rep. 1 Ex. 414: 12 Jur. N. S. Pt. II. 194.

(*g*) See Dan. Pr. 1540, 1541; Ord. XXVII. 2. Where the applicant is under disability, or a mere trustee, the affidavit is usually made by the solicitor. As to the person to make the affidavit, in general, see Dan. Pr. 1541; and see *post*, No. 1797.

(*h*) The written authority of the next friend to use his name is not required to be filed or produced: Dan. Pr. 1541.

affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing).

Sworn (*&c.: see ante*, No. 12). (*i*).

1797.

Affidavit for the writ, by the applicant's solicitor (*k*).

In Chancery.

(*Title, as in* No. 1796, *ante.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this matter for the above named A. B. (and C. D.), do solemnly swear, that, according to the best of my knowledge, information, and belief, the above named A. B., of (*residence and addition*)

If so: and the above-named C. D., of, *&c.*,

Or, if the applicant is a trustee only, say: is trustee under the will of X. Y., deceased [*or as may be*], for and on behalf of C. D. [and G. H.]: who

is [*Or*, are] beneficially (*Continue as in* No. 1796, *ante, to the end*).

1798.

Præcipe for the writ (*l*).

In Chancery.

A. B.
v.
Governor and Company of the Bank of England [*or as may be*].

Seal *distringas*, on behalf of A. B., to restrain transfer of stock.

Returnable —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1799.

The writ (*m*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriffs of London [*or as may be* (*n*)], greeting:

We command you, that you omit not by reason of any liberty, but that you enter the same, and distrain the Governor and Company of the Bank of England (*o*), by all their lands and chattels in your bailiwick: so that they or any of them do not intermeddle

(*i*) As to the persons before whom the affidavit may be sworn, see Dan. Pr. 646, 647, 786, 1541.

(*k*) See Dan. Pr. 1541; Ord. XXVII. 2.

(*l*) See Dan. Pr. 1541; Braithwaite's Pr. 190.

(*m*) See Dan. Pr. 1541; Braithwaite's Pr. 189; 5 Vic. c. 5, Sched. 1. The writ must be engrossed on parchment; and be stamped with a 5*s.* chancery fee fund stamp: Regul to Ord. Sched. 4; *ante*, No. 1554 (5). The original of the affidavit in support must be produced to the officer at the time the writ is presented for sealing, and be left with him to be filed; but no office copy need be taken: Braithwaite's Pr. 192.

(*n*) The writ must be directed to the sheriff or sheriffs of the county or place in which the chief office of the company to be restrained is situate: Braithwaite's Pr. 189, n. (*a*). For forms of directions of writs to sheriffs, see *ante*, No. 308.

(*o*) Or other corporation or company to be restrained: see Dan. Pr. 1541.

therewith, until we otherwise command you ; and that you answer us the issues of the said lands : so that they do appear before us in our High Court of Chancery, on the —— day of —— (*p*), to answer a certain bill of complaint, lately exhibited against them and other defendants, before us in our said Court of Chancery, by A. B., complainant ; and further to do and receive what our said Court shall then and there order in the premises ; and that you then have there this writ. Witness (*&c. : Conclude as in* No. 313, *ante*).

1800.
Indorsement on the writ (*q*).

The same as No. 4, *or* 7, *ante*.

1801.
Notice to accompany the writ (*r*).

(*Title, as in affidavit.*)

Take notice, that the distringas issued in this cause, and served herewith, has been so issued, and is served, for the purpose of preventing and restraining the transfer of all or any part of the (*Describe the stock, &c., upon which the distringas is to operate ; and in whose name or names it is standing*)—*If so :* and the payment of any dividend due or to become due thereon. And you are requested not to permit the transfer of the said stock—*If so :* and not to pay any such dividend—until the order of this honourable Court can be obtained. Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ : see ante*, No. 4, *or* 7.)

To the Governor and Company of the Bank of England [*or as may be*] ; and to their solicitor, secretary, and all others whom it may concern.

1802.
Request that transfer, &c., may be permitted, notwithstanding the writ (*s*).

I request that you will permit me [*Or*, G. H.] to transfer all or any part of the £——, bank 3*l.* per cent. annuities [*or as may be*] standing in my name [*or as may be*] in your books—*If so :* and to receive the dividends due, and to become due thereon—notwithstanding the distringas laid thereon by or on behalf of A. B., on the —— day of ——, 187—. Dated this —— day of ——, 187—.

G. H., of (*residence and addition*).
[*Or*, L. M., of (*Place of business*), solicitor for the said G. H.]

To the Governor (*&c. : as in* No. 1801, *ante*).

(*p*) The writ is made returnable on a day certain in term : which is usually, when it is issued in term time, the last day of the term ; and when issued out of term time, the first day of the next term ; but there must not be less than eight clear days between the teste and the return ; Dan. Pr. 1541 ; Braithwaite's Pr. 192.

(*q*) See Dan. Pr. 1541 ; Braithwaite's Pr. 190.

(*r*) See Dan. Pr. 1541 ; Ord. XXVII. 4 ; Braithwaite's Pr. 192. As to the mode of service of the writ and notice, see Dan. Pr. 1541.

(*s*) See Dan. Pr. 1542 ; Ord. XXVII. 4.

1803.
Petition of course, to discharge the writ (*t*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the above named plaintiff.

Showeth as follows:

1. A writ of distringas was issued in this cause on the —— day of ——, 187—, against the defendants, at the instance of your petitioner, with reference to the sum of £——, bank 3*l.* per cent. annuities [*or as may be*], standing in the books of the defendants in the name of G. H.;

If so: and the dividends due and to become due thereon; and the said distringas was on or about the —— day of ——, 187—, lodged with the said defendants.

2. Your petitioner is now desirous to have the said writ discharged.

Your petitioner therefore humbly prays, that the said writ of distringas may be discharged accordingly.

And your petitioner will ever pray, &c.

1804.
Notice of motion, to discharge the writ (*u*).

Formal parts: see ante, No. 55.

on the part of G. H., of (*residence and addition*), that the writ of distringas issued in this cause on or about the —— day of ——, 187—, against the defendants, at the instance of the plaintiff, with reference to the sum of £——, bank 3*l.* per cent. annuities [*or as may be*], standing in the books of the defendants in the name of the said G. H. [*or as may be*]—*If so:* and the dividends due, and to become due thereon—may be discharged: with costs to be paid by the said plaintiff to the said G. H.

Section III.—Stop Orders (*v*).

1805.
Petition for a stop order (*x*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition* (*y*)).

(*t*) See Dan. Pr. 1542; Ord. XXVII. 3. For orders in like case, see *Equitable Reversionary Interest Society* v. *Bank of England*, M. R. 16 Dec. 1869, Rolls' Lib.; *Cox* v. *Rhymney Iron Company*, M. R. 27 April, 1870, Rolls' Lib.

(*u*) See Dan. Pr. 1542; Ord. XXVII. 3.

(*v*) As to stop orders, see generally, Dan. Pr. 1543—1547; Seton, 952—954. As to charging orders on funds in court, and stop orders in aid of charging orders, see *ante*, Nos. 917—921, and notes thereto. As to the liability for costs of a person obtaining a stop order, see Dan. Pr. 1545; Ord. XXVI. 1. As to lodging the order with the Accountant-General, see Dan. Pr. 1545. As to the right of an assignee to consent for his assignor, see *ib.* 1544; and as to the costs of a stop order, see *ib.* 1546; Morgan & Davey, 47. As to a stop order on documents in Court, see Dan. Pr. 1547.

(*x*) See Dan. Pr. 1544.

(*y*) The assignor and assignee may be co-petitioners.

Showeth as follows:

1—3. *Show the assignor's interest in the fund in Court (z): see ante*, No. 920, *par.* 1—3.

4. *Show the assignment to, or other title of, the assignee (z); as thus:* By an indenture dated the —— day of ——, 187—, and made between the said C. D., of the one part, and your petitioner of the other part, the said C. D., for the consideration therein mentioned, assigned his said one third share of the said £10,000 reduced annuities, unto your petitioner, his executors, administrators, and assigns, absolutely, by way of sale [*Or*, mortgage]; and authorised him and them to receive and give discharges for the said share [*or as may be*].

5. *Describe the present state of the fund in Court; as thus:* The said sum of £10,000 reduced annuities is now remaining on the credit of this cause, "The account of H. D., and her children."

Your petitioner therefore humbly prays, that (*Describe the fund, or share of fund, to be restrained: see prayer of* No. 920, *ante; and post*, Nos. 1806, 1807).

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1806.

Summons for a stop order on an entire fund in Court (*a*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), that the (*Describe the fund to be affected, and how it stands in the Accountant-General's books: according to his voluntary certificate; as thus:* £——, bank 3*l.* per cent. annuities [*Or*, £——, cash] remaining on the credit of this cause, "The account of C. D."),

to which the plaintiff C. D.

Or, defendant C. D.—*Or*, C. D., of (*residence and addition*), is—*If so:* or may be or become—entitled, or any part thereof,

If so: or any interest hereafter to accrue due on the said stock, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said A. B.

(*z*) The petition must show the title of the person, the payment of whose fund is intended to be restrained: although it is not absolutely necessary that it should show the particular share of the fund to which he is entitled; and it must also show the title of the assignee: see Dan. Pr. 1544.

(*a*) See Dan. Pr. 1544. For order in like case, see Seton, 952, No. 1. The assignor and assignee may be co-applicants.

1807.

Summons for a stop order on a share of a fund in Court (*b*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), that the one third share to which the plaintiff C. D.

Or, defendant, C. D.—*Or*, C. D., of (*residence and addition*), is—*If so:* or may be or become—entitled of the (*Describe the fund, and cause, &c., as in* No. 1806, *ante*), or any part thereof,

If so: or of any interest hereafter to accrue due on the said annuities, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said A. B.

1808.

Affidavit in support of petition, or summons (*c*).

Formal parts: see ante, No. 9.

1. 2. *Show titles of assignor and assignee: see ante*, No. 1805, *par.* 1—4.

3. *Prove assignor's execution of the assignment; as thus:* The said indenture is the parchment writing, marked A., now produced and shown to me (*d*). I saw the said C. D. execute the said indenture. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.; and the name or signature "——," subscribed to the attestation of such signature indorsed on the said indenture, is of my proper handwriting

Or, I am well acquainted with the handwriting of the said C. D.: having seen him write. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.

4. *In the case of a petition, prove service thereof, when necessary* (*e*).

5. *Show means of knowledge.*

1809.

Summons for a further stop order, on assignment of interest by restraining party (*f*).

Formal parts: see ante, No. 60.

on the part of L. M., of (*residence and addition*), that the (*Describe the fund, or share of fund, restrained: see ante*, Nos. 1806, 1807),

(*b*) See *ante*, No. 1806, n. (*a*). For orders in like case, see *Glanvill* v. *Glanvill*, M. R. at Chambers, 7 Nov. 1865, Reg. Lib. A. 2505; *Bedford* v. *Bedford*, M. R. at Chambers, 8 Aug. 1870, Reg. Lib. A. 2178; and Seton, 952, No. 2. For other forms of stop orders, see Seton, 952, Nos. 3, 4; 953, No. 5.

(*c*) See Dan. Pr. 1544. The title of the assignor may often be established by production of documents in the cause, without an affidavit thereof. The application must, in every case, be supported by the Accountant-General's voluntary certificate of the fund.

(*d*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*e*) For form of affidavit of service of a petition, see *ante*, No. 49.

(*f*) See Dan. Pr. 1547; *Robertson* v. *Wynch*, M. R. at Chambers, 25 Feb. 1861, Reg. Lib. B. 383. It would seem that the Registrars prefer this form to No. 1810, *post*.

may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said L. M.: instead of A. B., as directed by the order dated the —— day of ——, 1870— (*Former stop order*).

1810.

The like (*g*).

Formal parts: see ante, No. 60.

on the part of L. M., of (*residence and addition*), that the said L. M. may be substituted for A. B., in the order dated the —— day of ——, 187—(*Former stop order*) named, as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the bank annuities [*or as may be*], in the said order mentioned.

1811.

Petition, for the like order (*h*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of L. M., of (*residence and addition*).

Showeth as follows:

1. *Recite the existing stop order; as thus:* By an order dated the —— day of ——, 187—, and made by your lordship [*or as may be*] in this cause on the petition [*Or, if on summons, say:* on the application] of A. B., it was ordered that (*Set out so much of the order as imposed the restraint*).

2. *Show the title of the petitioner; as thus:* By an indenture dated the —— day of ——, 187—, and made between the said A. B. of the first part, the said C. D. of the second part, and your petitioner of the third part, for the consideration therein mentioned the said A. B., with the privity of the said C.D., assigned, and the said C. D. assigned and confirmed, the said (one third share of the said) bank annuities, unto your petitioner, his executors, administrators, and assigns, absolutely, by way of sale [*Or*, mortgage]; and thereby authorised him and them to receive and give discharges for the same.

3. The said £——, bank 3*l.* per cent. annuities, is now remaining on the credit of this cause [*or as may be*].

Your petitioner therefore humbly prays, that (the share of the said C. D., of) the said £——, bank 3*l.* per cent. annuities [*or as may be*], or any part thereof,

If so: or any interest hereafter to accrue thereon, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to your peti-

(*g*) See *Tench* v. *Cheese*, M. R. at Chambers, 26 Jan. 1865, Reg. Lib. B. 232; and *ante*, No. 1809, n. (*f*).

(*h*) See Dan. Pr. 1547. The original and new assignees may be co-petitioners.

tioner: instead of the said A. B., as directed by the said order of the —— day of ——, 187—.

[*Or*, that your petitioner may be substituted for the said A. B., as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the said £——, bank 3*l.* per cent. annuities—*If so:* or the interest to accrue due thereon [*or as may be*]—

Or that (*&c.: Continue as in* No. 57, *ante, to the end; and add foot note*, No. 58).

1812.

Affidavit in support of summons, or petition (*i*).

Formal parts: see ante, No. 9.

1. *Show title of the applicant: see ante*, No. 1811, *par.* 2 (*k*).

2. *Prove execution by the assigning parties; as thus:* The said indenture dated the —— day of ——, 187— (*assignment*), is the parchment writing, marked B., now produced and shown to me (*l*). I saw the said A. B., and C. D., respectively execute the said indenture marked B. The name or signature "——", subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B. The name or signature "——", subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D. The name or signature "——", subscribed to the attestation indorsed on the said indenture of the signatures thereto of the said A. B., and C. D., is of my proper handwriting.

Or, I am well acquainted with the handwriting of the said A. B., and C. D., respectively: having seen them respectively write. The name or signature "——", subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B.; and the name or signature "——", subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D.

3. *Show means of knowledge.*

1813.

Petition, to discharge a stop order (*m*).

Proceed as in No. 1805, *ante, to end of par.* 4 (*n*).

5. By an order dated (*&c.: Recite the stop order*).

6. *State grounds for applying to discharge the order.*

(*i*) See Dan. Pr. 1547.

(*k*) As the former stop order, or an office copy of it, must be produced on the application, the purport of the order need not be set out in the affidavit.

(*l*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*m*) See Dan. Pr. 1547.

(*n*) The statements to be inserted in the petition, and the order to be prayed for, will depend on the grounds on which a discharge of the stop order is sought.

Your petitioner therefore humbly prays, that the said order of the —— day of ——, 187— (*Stop Order*),

Or, that so much of the said order dated, *&c.*, as directs that, *&c.*

may be discharged: with costs to be paid by the said A. B. to your petitioner [*or as may be*].

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1814.

Summons, for the like (*o*).

Formal parts: see ante, No. 60.

on the part of C. D., in the order dated the —— day of —— 187—. named

Or, C. D., of (*residence and addition*)

that the (said) order dated the —— day of ——, 187—, whereby it was ordered

Or, that so much of the order dated the —— day of ——, 187, as directs

that (*Recite, concisely, the order or restraining clause*) may be discharged—*If so:* with costs to be paid by the said A. B. to the said applicant.

(*o*) See Dan. Pr. 1547. For order in like case, see *Bouquet* v. *Waller*, V. C. K. at Chambers, 12 Dec. 1865, Reg. Lib. A. 2578; and see Seton, 935, No. 6.

CHAPTER XXXVIII.

THE WRIT OF NE EXEAT REGNO (*a*)

1815.
Prayer for the writ, in a bill (*b*).

That Her Majesty's writ of *ne exeat regno* may issue out of, and under the seal of, this honourable Court, to restrain the said defendant C. D. from departing out of the jurisdiction of this honourable Court.

1816.
Motion paper, for the writ (*c*).

Formal parts : see ante, No. 53.

To move on behalf of the plaintiff, that a writ or writs of *ne exeat regno* may issue against the defendant C. D. ; to be marked for security in £——.

A print of the bill, and affidavit in support, accompany (*d*).

1817.
Summons for the writ, in a summons suit (*e*).

Formal parts : see ante, No. 60.

on the part of the plaintiff, that a writ or writs of *ne exeat regno* may issue against the defendant C. D.

(*a*) As to this writ, see generally, Dan. Pr. 1548—1562. As to when the writ will be issued, see *ib.* 1548—1554 ; how granted, *ib.* 1554—1558 ; how executed, *ib.* 1558—1559 ; and how discharged, *ib.* 1559—1562. See also the Debtors' Act, 1869 (32 & 33 Vic. c. 62), s. 6 ; and the Absconding Debtors' Act, 1870 (33 & 34 Vic. c. 76).

(*b*) See Dan. Pr. 1553.

(*c*) *Ibid.*, 1554. For orders in like case, see *Binks* v. *Binks*, M. R. 24 Aug. 1866, Reg. Lib. A. 2151 ; *Other* v. *Smurthwaite*, V. C. W. 27 Nov. 1866, Reg. Lib. B. 2299 ; and see Seton, 959, No. 1.

(*d*) If the defendant has not appeared, the Record and Writ Clerk's certificate of the filing of the bill (see *ante*, No. 1774) will be required : see Dan. Pr. 1557.

(*e*) See Dan. Pr. 1554, n. (*n*).

1818.
Affidavit in support of application for the writ (*f*).

In Chancery.

(*Title of the cause, and reference to the record.*)

I, A. B., of (*residence and addition*), the above named plaintiff, make oath and say, as follows:

1. *State, concisely, the institution and object of the suit; as thus:* The bill in this cause was filed by me on the —— day of ——, 187—, against the above named defendant C. D., to obtain an account of all monies received by the said defendant for or on my account, or for my use, as my agent in the management of my estate called E., in the county of ——, as in the said bill mentioned, and of the application of such monies, and for payment by the said defendant to me of what, on taking such account, should be found due from him to me.

2. *State the existence of a debt due from the defendant; as thus:* The two accounts now produced and shown to me, and marked respectively F. and G. (*g*), have been rendered to me by the said defendant, and purport to be his accounts as such agent as aforesaid. It appears by the said accounts that the said defendant is indebted to me in the sum of £——, on balance thereof. I have investigated the said accounts; and I positively say that [*Or*, and to the best of my belief] the said defendant C. D. is now justly and truly indebted to me in the sum of £——, and upwards, on the balance of the said accounts [*or as may be*].

3. *Show defendant's intention to go abroad; and deponent's means of knowledge.*

4. From the facts aforesaid, and for the reasons hereinbefore stated, I verily believe that the said defendant C. D., unless he be forthwith apprehended, will depart out of the jurisdiction of this honourable Court; and that the debt due to me as aforesaid from the said defendant will be in danger of being lost to me by the said defendant quitting the said jurisdiction.

Sworn (*&c.: see ante*, No. 12).

1819.
Undertaking as to damages on behalf of infants (*h*).

(*Short title.*)

I undertake to pay any sum which this Court may hereafter direct, by way of damages to the defendant C. D., by reason of a writ of *ne exeat regno* being issued against him at the instance of the plaintiff. Dated this —— day of ——, 187—.

X. Y., the plaintiff's next friend.

(*f*) See Dan. Pr. 1557. As to when an affidavit is necessary, the person to make it, and its material contents, see *ib.* 1555—1557. As to furnishing copies of affidavits in support, see *ib.* 795, 1557; Ord. XXXVI. 9. For form of request and undertaking, see *ante*, No. 1544. As to the evidence required at law, see Chitty's Arch. 749—761.

(*g*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*h*) See Dan. Pr. 1557; Seton, 959, No. 1; 868, No. 4. The undertaking is entered and signed in the Registrar's book: Dan. Pr. 1557.

1820.

Præcipe for the writ (*i*).

In Chancery.

(*Reference to the record.*)

A. v. B. } Seal a writ of *ne exeat regno*, directed to the Sheriff of Anglesey [*or as may be : see ante*, Nos. 308, 309], against the defendant C. D.

Security in the sum of £——.

Order (*Directing the writ to issue*) dated —— day of ——, 187—.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ : see ante*, No. 4, *or* 7.)

1821.

General form of the writ (*j*).

Victoria (*&c. : see ante*, No. 313).

To the Sheriff of Anglesey [*or as may be : see ante*, No. 308], greeting :

Whereas it is represented unto us in our Court of Chancery on the part of A. B., complainant, against C. D., defendant, amongst other things, that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas : as by oath made in that behalf appears : which tends to the great prejudice and damage of the said complainant : Therefore, in order to prevent this (*k*) injustice, we do hereby command you, that you do without delay cause the said C. D. personally to come before you, and give sufficient bail or security, in the sum of —— (*Amount mentioned in the order for the writ*), that he the said C. D. will not go or attempt to go into parts beyond the seas, without leave of our said Court. And in case the said C. D. shall refuse to give such bail or security, then you are to commit him the said C. D. to our next prison : there to be kept in safe custody until he shall do it of his own accord. And when you shall have taken such security, you are forthwith to make and return a certificate thereof to our said Court of Chancery, distinctly and plainly under your seal, together with this writ. Witness (*&c. : Conclude as in* No. 313, *ante*).

1822.

The like, to a county palatine (*j*).

Victoria (*&c. : see ante*, No. 313).

To our Chancellor of our county palatine of —— [*See ante*, No. 309], or his deputy there, greeting :

(*i*) See Dan. Pr. 1557; Braithwaite's Pr. 230, 232. The order must be produced at the time the writ is presented for sealing : *ib.*

(*j*) See Dan. Pr. 1557; Braithwaite's Pr. 229, 231; Veal's Pr. 73, 75; Harr. by Newl. 537; Hinde, 613; Beames on *Ne exeat*, 22. The writ must be engrossed on parchment, and stamped with a 20*s.* chancery fee fund stamp : Regul. to Ord. Sched. 4; *ante*, No. 1554 (5). As to the delivery, execution, and return of the writ, see Dan. Pr. 390, *et seq.*, 1558, 1559.

(*k*) "his" in Braithwaite's Pr. 229, 231; Veal's Pr. 73, 75; Harr. by Newl. 537; but "this" in Hinde, 613; Beames on *Ne exeat*, 23.

Whereas it is represented unto us in our Court of Chancery on the part of A. B., complainant, against C. D., defendant, amongst other things, that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas, as by oath made in that behalf appears: which tends to the great prejudice and damage of the said complainant: Therefore, in order to prevent this (*l*) injustice, we do hereby command you, that by our writ under your seal of our aforesaid county, duly issued, you command the Sheriff of our aforesaid county without delay to cause the said C. D. personally to come before him, and give sufficient bail or security, in the sum of £—— (*Amount mentioned in the order for the writ*), that he the said C. D. will not go or attempt to go into parts beyond the seas without leave of our said Court; and in case the said C. D. shall refuse to give such bail or security, the said Sheriff is then to commit him the said C. D. to our next prison: there to be kept in safe custody until he shall do it of his own accord. And when the said Sheriff shall have taken such security, you are forthwith to make and return a certificate thereof to our said Court of Chancery, distinctly and plainly under your seal, together with this writ. Witness (*Conclude as in* No. 313, *ante*).

1823.

Indorsement on the writ (*m*).

By the Lord High Chancellor of Great Britain.

At the instance of the within named (*Insert name of party applying for the writ*).

Take security in the sum of (*Set forth, in words at length, the sum mentioned in the order*).

(*Name, &c., of solicitor or party issuing the writ: see ante,* No. 4, *or* 7.)

1824.

Notice of motion, for the discharge of the writ (*n*).

Formal parts: see ante, No. 55.

on the part of the defendant C. D.:

1. That the writ of *ne exeat regno* issued against him pursuant to the order dated the —— day of ——, 187—, and the said order, may be discharged with costs, including the costs of this application; and that the plaintiff may be ordered to pay such costs to the said defendant.

2. That the bond given by the said defendant to the Sheriff of ——, pursuant to the said order and writ, may be delivered up to be cancelled.

(*l*) See *ante,* No. 1821, n. (*k*).

(*m*) As to the indorsement, see Dan. Pr. 1557.

(*n*) See Dan. Pr. 1559. For order in like case, see *Other* v. *Smurthwaite,* V. C. W. 13 Dec. 1866, Reg. Lib. B. 2644; and see Seton, 960, No. 3. As to the discharge of the writ, see Dan. Pr. 1559—1562.

3. That an inquiry may be made what damages have been sustained by the said defendant by reason of the said order having been made (*o*).

4. That the plaintiff may be ordered, pursuant to his undertaking contained in the said order, to pay to the said defendant, within (one month) after the date of the Chief Clerks' certificate of the result of such inquiry, what shall be thereby certified in respect of such damages.

(*o*) See Dan. Pr. 1561. As to the prosecution of the inquiry at Chambers, see *ib.* 1084, *et seq.*

CHAPTER XXXIX.

RECEIVERS (*a*).

Section I.—Mode and Effect of Appointment of a Receiver (*b*).

1825.

Prayer for a receiver (and injunction), in a bill (*c*).

That some proper person or persons may be appointed by this honourable Court to receive the rents and profits of the real estate of the said testator; and to collect and get in his outstanding personal estate [*or as may be*]. And that the defendant A. B. may be restrained, by the order and injunction of this honourable Court, from in any way interfering with the said real and personal estate, or any part thereof, or with any rents or profits, dividends or interest, arising from any part of the said real and personal estate.

1826.

Notice of motion, or summons, for a receiver (*d*).

Formal parts: see ante, No. 55, *or* 60.
on the part of the plaintiff, that a proper person
Or, that L. M., of (*residence and addition*), on giving security,
may be appointed (*State for what purpose; as thus:*

(*a*) As to receivers, see generally, Dan. Pr. 1563—1616; Adams on Eq. 447; Bennett's Receiver, *passim*; Chambers on Infants, 547—564; Collyer on Part. 240—242; Dixon on Part. 557; Fisher on Mort. 399—460; Jeremy on Eq. 248—253; Kerr, on Receivers, *passim*; Lewin on Trusts, 730—732; Lindley on Part. 1684; Macpherson on Infants, 266—268; Seton, 1002—1039; Story Eq. Jur. ss. 827—838; Williams' Exors. 2007; Woodfall, 50—52. As to Managers and Consignees, see Dan. Pr. 1617—1618. As to the cases in which, and of what property, receivers will be appointed, see *ib.* 1563—1577—1580. As to who may be appointed, see *ib.* 1580—1582.

(*b*) See Dan. Pr. 1582—1593; and see Kerr on Receivers, 1—10, 99—115.

(*c*) See *Winch* v. *Lumb*, M. R. (1863, W. No. 136); Dan. Pr. 1582.

(*d*) See Dan. Pr. 1582, 1583. For orders in like case on motion, see *Holmes* v. *Dudley*, V. C. M., 13 Dec. 1866, Reg. Lib. A. 2780; *Cleverly* v. *Troughton*, M. R. 14 Dec. 1866, Reg. Lib. A. 2788; and Seton, 1002, *et seq.*, 1023, *et seq.* As to the form of the order on an application by a *puisne* incumbrancer, see

to receive the rents and profits of the real and leasehold estates, and to collect and get in the outstanding personal estate, of A. B., the testator in the bill named):

If of real or leasehold estates, add:

And that the tenants of the said estates may be ordered to attorn, and pay their rents in arrear and growing rents to such receiver (*e*):

If of outstanding personal estate, add:

And that the defendant C. D., the executor of the will [*Or*, administrator of the effects] of the said A. B., may be ordered to deliver over to such receiver all securities in his hands for such outstanding personal estate, together with all books and papers relating thereto [*or as may be* (*f*)]:

And that such receiver may be directed from time to time to pass his accounts, and pay his balances into the bank, to the credit of this cause; and that such balances may be laid out in bank 3*l.* per cent. annuities, and accumulated (*f*).

1827.

Notice of motion for a receiver, pending actions at law, and proceedings in Court of Probate (*g*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that some proper person may be appointed to receive the rents and profits of the real estates of M. E., the intestate in the plaintiff's bill named: until such time as the plaintiff's title shall be determined in some or one of the actions at law in the bill mentioned. And that the same person may be appointed to receive the rents and profits of the leasehold estates of the said M. E.; and to collect and get in her outstanding personal estate, pending the litigation in Her Majesty's Court of Probate between F. H. D., Her Majesty's Procurator-General, and the plaintiff in this suit: as in the said bill mentioned.—Direction to the tenants: see *ante*, No. 1826.—And that the plaintiff may deliver over to such person so to be appointed all securities in his hands for such outstanding estate, together with all books and papers relating thereto.—Direction for receiver to pass his accounts, and pay in balances: see *ante*, No. 1826.

Dan. Pr. 1564, 1586. As to when the application may be made by summons, see *ib.* 1583. A married woman is entitled to a separate notice of motion for a receiver of her separate estate: *ib.* 1584.

(*e*) See Dan. Pr. 1586—1590; Seton, 1002, No. 1. As to the form, where any of the parties to the record are in possession, see Dan. Pr. 1590; Seton, 1023.

(*f*) See Dan. Pr. 1586, 1598.

(*g*) See *Williams* v. *Attorney-General*, M. R. 8 May, 1861, Reg. Lib. B. 1055. As to the appointment of receivers by the Court of Chancery, pending litigation in the Court of Probate, see Dan. Pr. 1572. As to the power of the Court of Probate to appoint a receiver and grant administration, *pendente lite*, see 20 & 21 Vic. c. 77, ss. 70—75; 21 & 22 Vic. c. 95, s. 22; Dodd & Brooks, 454—461; Williams' Exors. 2007.

1828.

Petition by a defendant, for the appointment of a receiver (*h*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the defendant C. D.

Showeth as follows:

1. *State the institution and object of the suit.*
2. *State the decree, and subsequent material proceedings.*
3. *State the special grounds for the appointment of a receiver.*

Your petitioner therefore humbly prays, that a proper (*Continue as in* No. 1826, *ante, to the end*).

Or that your lordship (*Continue as in* No. 57, *ante; and add foot note*, No. 58).

1829.

Summons to proceed on order directing a proper person to be appointed receiver (*i*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], to proceed on the decree [*Or*, order] dated ——, 187—; and that a proper person

Or, that L. M., of (*residence and addition*),

may be appointed receiver pursuant thereto.

1830.

Summons for leave for a party to the cause to propose himself as receiver (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to propose himself as the person to be appointed receiver under the decree [*Or*, order] dated the ——, 187—; but without giving security: he undertaking to act without salary [*or as may be*].

1831.

Proposal for a receiver (*l*).

(*Short title, and reference to the record.*)

The proposal of the plaintiff [*or as may be*], as to the receiver to be appointed pursuant to the decree [*Or*, order] dated ——, 187—.

The property over which the receivership is to extend is particularised in the affidavit of X. Y., filed ——, 187— [*or as may be*].

The plaintiff [*or as may be*] proposes L. M., of (*residence and addition*), as a proper person to be appointed receiver, as aforesaid.

(*h*) See Dan. Pr. 1583 n. (*k*). For order in like case, see *Hiles* v. *Moore*, M. R. 17 Feb. 1852, Reg. Lib. A. 388: 15 Beav. 175. As to when a receiver will be appointed at a defendant's instance, see Dan. Pr. 1582.

(*i*) See Dan. Pr. 1586.

(*k*) *Ibid.*, 1580. As to when this application is necessary, see *ib.* Leave is often given by the decree or order directing the appointment: *ib.* For the principles on which the Court acts in appointing a party receiver, see *Cookes* v. *Cookes*, 2 De G. J. & S. 526.

(*l*) See Dan. Pr. 1587. A written proposal for a receiver is not required at some of the Chambers: see *ib.*

1832.

Affidavit of the nature and value of the property over which the receivership is to extend (*n*).

Formal parts : see ante, No. 9.

1. *Describe the property, succinctly, as thus :* The real and leasehold estates of the testator A. B., in the decree [*Or*, order] in this cause dated the ——, 187—, mentioned, consist of the short particulars set forth in the first column of the first part of the schedule hereto. The said estates are in the occupation of the several persons, and at the annual rents, specified in the second and third columns of the said first part. The arrears of rent specified in the fourth column of the said first part are also now due. The outstanding personal estate of the said testator consists of the particulars set forth in the first column of the second part of the said schedule ; and the values thereof are set forth in the second column of the said second part.

2. *Show means of knowledge.*

The Schedule above referred to.

First Part.

Particulars of estate.	Tenant's name.	Annual rent.	Arrears due.
		£ s. d.	£ s. d.
The Home Farm, at Uxbridge, Middlesex.	John Jones.	300 0 0	75 0 0
&c.	&c.	&c.	&c.

Second Part.

Particulars of outstanding estate.	Value.
	£ s. d.
Book debts	350 0 0
&c.	&c.

1833.

Affidavit of fitness of proposed receiver (*o*).

Formal parts : see ante, No. 9.

1. I have for —— years last past known and been well acquainted with L. M., of (*residence and addition*), the person proposed to be appointed, in this cause, the receiver of the rents and profits of the real estate, and to get in the outstanding personal estate, of the testator A. B. [*or as may be*].

2. The said L. M. is (*State the trade, business, or profession, if any, of the proposed receiver ; and where carried on, and for how long, to the deponent's knowledge*).

3. The said L. M. is a person of respectability and integrity, and of good credit ; and in my judgment he is a fit and proper person to be appointed receiver of the said rents and profits, and outstanding estate [*or as may be*].

(*n*) As to the evidence required on an application to appoint a receiver, see Dan. Pr. 1584, 1586, 1587.

(*o*) See Dan. Pr. 1587.

1834.
Recognizance by a receiver and his sureties, pursuant to a decree or order (*p*).

Proceed as in No. 1383, *ante, to* it was ordered; *and recite so much of the decree or order as directs a proper person to be appointed —or as directs that the person therein named be appointed on giving security; as thus:*

it was ordered that a proper person should be appointed to receive

Or, that the above bounden L. M., on first giving security, should be appointed receiver of

the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator in the bill named:

And whereas the Judge to whose Court the said cause is attached hath

If the receiver has not been approved by the decree or order, add: approved of the said L. M. as a proper person to be such receiver; and hath

approved of the above bounden C. D. and E. F. as sureties for the said L. M.; and hath also approved of the above written recognizance, with the underwritten condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said decree [*Or*, order], and the General Orders of the said Court in that behalf: and in testimony of such approbation, the Chief Clerk of the said Judge hath signed an allowance in the margin hereof:

Now the condition of the above written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate, of the said A. B. (*q*), at such periods as the said Judge shall appoint; and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct, then the above recognizance shall be void, and of none effect: otherwise the same is to be and remain in full force and virtue.

L. M.
C. D. } Taken and acknowledged (*&c.: see ante*, No. 1383).
E. F.

(*p*) See Dan. Pr. 1584, 1585; Ord. XXIV. 1; XLII. 13; Regul. 8 Aug. 1857, Sched. No. 13. The recognizance must be engrossed on parchment; but it is not now chargeable with any stamp duty. For form of memorandum of allowance of the recognizance, see *ante*, No. 1383. As to enrolling, and vacating the enrolment of a recognizance, see Dan. Pr. 1588; Ord. XLII. 12. A fee of about 7*s.* 6*d.* is payable at the Chancery Inrolment Office, for enrolling a recognizance: Dan. Pr. 1588 n. (*x*). As to the order of payment of recognizances out of assets, see Williams' Exors. 932, 940—944.

(*q*) This must accord with the decree or order by which the receiver is directed to be appointed.

1835.

Affidavit of sureties, as to their solvency (*r*).

In Chancery.

(*Title of the cause, and reference to the record.*)

We, C. D., of (*residence and addition*), and E. F., of, *&c.*, the proposed sureties for L. M., of (*residence and addition*), the person proposed to be appointed receiver in this cause, severally make oath and say, as follows:

1. First, I the said C. D., for myself say, that I am well and truly worth the sum of £—— (*Insert the amount for which he is to be bound*), after payment of all my just debts and liabilities.

2. And I the said E. F., for myself say, that I am (*&c.: as above, to* liabilities).

Sworn (*&c.: see ante*, No. 13).

1836.

Summons to appoint receiver, after security given (*s*).

Formal parts: see ante, No. 60.

on the part of L. M., of (*residence and addition* (*t*)), that the applicant: having been approved as a proper person to be appointed to receive the (*Follow the words of the decree or order directing the appointment of a receiver*), pursuant to the decree [*Or*, order] dated the ——, 187—, and having given security, pursuant to the 24th of the Consolidated General Orders, rule one, by entering into a recognizance, together with C. D. and E. F., as his sureties, dated the ——, 187—, which has been approved by the Judge, and duly enrolled: may be appointed to receive the (*Follow the words of the decree or order, as above*). And that the said L. M. may on the ——, 187—, and the same day in every succeeding year [*or other period fixed*], leave at the Chambers of the Judge his annual [*or as may be*] account as such receiver. And that the said L. M. may, within fourteen days after the date of the Chief Clerk's certificate of the allowance of such account,

Or, on the —— next, and the same day in every succeeding year,

pay the balance that shall be thereby certified to be due from him on such account, or such part thereof as shall be certified to be proper to be so paid: as directed by the said decree [*Or*, order] of the ——, 187—.

(*r*) See Dan. Pr. 1585, 1587. As to who may be sureties, see *ib.*

(*s*) See Dan. Pr. 1588. For order in like case, see Seton, 1003, No. 7. This summons is required, after security has been given by a receiver approved under an order directing a proper person to be appointed: Dan. Pr. 1588.

(*t*) According to the scale of costs in Regul. 8 Aug. 1857, Sched. No. 15 (*ante*, No. 1569), it seems that it is the business of the receiver's solicitor to conduct the proceedings relating to his appointment, from the stage at which the receiver is approved to the completion of the appointment, including the recognizance, and the summons to appoint: the practice, however, on this point seems to be somewhat unsettled. As to the persons by whom applications arising out of the receivership should be made, see Dan. Pr. 1598, 1599.

1837.

Summons to settle security to be given by a receiver pursuant to an order (*u*).

Formal parts: see ante, No. 60.

on the part of L. M. (*x*), in the decree [*Or*, order] dated the——, 187—, named, to proceed under the said decree [*Or*, order]; and to settle the security to be given by him as receiver, pursuant thereto.

1838.

Certificate of the security having been given (*y*).

(*Title, and reference to the record.*)

In pursuance of the directions given to me by the Master of the Rolls [*Or*, Vice-Chancellor ——], I hereby certify that, in pursuance of the decree [*Or*, order] in this cause, dated the —— day of ——, 187—, L. M., of (*residence and addition*): the person who, upon first giving security, is by the said decree [*Or*, order] appointed receiver of the rents and profits of the real estates, and to collect and get in the outstanding personal estate of A. B., in the said decree [*Or*, order] named [*or as may be*]: has given security pursuant to the General Order of this Court; and has entered into a recognizance, together with C. D. and E. F., as his sureties, dated the —— day of ——, 187—, which has been approved of by the said Judge: in testimony whereof I have signed an allowance in the margin thereof; and such recognizance has been duly enrolled:

And I also certify, that the said Judge has appointed the —— day of ——, next, and the same day in each succeeding year [*or as may be*], to be the day on which the said L. M. is annually [*or as may be*] to cause his account to be delivered into the Chambers of the said Judge. And fourteen days after the date of the Chief Clerk's certificate allowing each account is appointed as the time during which the said L. M. is to pay the balances appearing due on the accounts so to be delivered in, or such part thereof as shall be certified to be proper to be paid: as directed by the said decree [*Or*, order] of the —— day of ——, 187—.

Dated (*&c.: see ante*, No. 1511).

1839.

Recognizance by a receiver and his sureties, before an order to approve or appoint has been made (*z*).

Proceed as in No. 1383, *ante*, *to the first* whereas; *and continue thus:*

Whereas his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], on an application lately made to him at Chambers, in a cause now pending in the High Court of Chancery wherein G. H. is plaintiff, and I. K. is defendant,

(*u*) See Dan. Pr. 1588. This form should be used where the receiver has been appointed by the decree or order, subject to security being given. For forms of affidavit of the nature and value of the property over which the receivership is to extend, and of the sureties as to their solvency, see *ante*, Nos. 1832, 1835.

(*x*) See *ante*, No. 1836, n. (*t*).

(*y*) See Dan. Pr. 1589.

(*z*) As to when this Form may be used, see Dan. Pr. 1589.

Or, wherein G. H., and another [*Or*, others] are plaintiffs, and I. K. and another [*Or*, others] are defendants,

Or, in a certain matter now pending in the High Court of Chancery, intituled, In the matter of ——,

hath approved of the above bounden L. M., subject to his giving security, as a proper person to be appointed to receive (*State what: as thus:* the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator in the plaintiff's bill named); and hath approved of the above bounden C. D. and E. F. as sureties for the said L. M.; and hath also approved of the above written recognizance, with the underwritten condition, as a proper security to be entered into by the said L. M., C. D. and E. F., pursuant to the General Orders (*Continue as in* No. 1834, *ante, to the end*).

1840.

Minute of order appointing receiver, after such recognizance has been enrolled (*a*).

Formal parts, and note of the evidence: see ante, No. 1281.

L. M., of (*residence and addition*), having been approved by the Judge as a proper person to be appointed to receive (*State what: see ante*, No. 1839); and having given security, pursuant to the 24th of the Consolidated General Orders, rule one, by entering into a recognizance, together with C. D. and E. F. as his sureties, dated the ——, 187—, which has been approved by the Judge, and duly enrolled: the Judge appoints the said L. M. receiver of the (*State what: see ante*, No. 1839; *and*

If of real or leasehold estates, add direction to attorn: as in No. 1826, *ante:*

If of outstanding personal estate, add direction as to securities, &c.: as in No. 1826, *ante*):

And orders that the said L. M. do on the ——, 187—, and the same day in every (*Continue as in* No. 1836, *ante, to* so paid; *and conclude thus:*) into the bank to the credit of this cause [*Or*, matter]; and that such balances be laid out in bank 3*l.* per cent. annuities, and accumulated [*or as may be*].

1841.

Motion paper, for writ of assistance, to put receiver in possession (*b*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for a writ of assistance, directed to the Sheriff of Anglesey [*or as may be: see ante*, Nos. 308, 309], to put L. M., the receiver appointed in this cause, into possession, pursuant to the order dated ——, 187—, of the farm and lands at B., now in possession of the defendant X. Y. [*or as may be*].

The order dated ——, 187—, appointing the receiver, and an affidavit in support accompany.

(*a*) See Dan. Pr. 1589.

(*b*) *Ibid.*, 1590; and notes to No. 960, *ante*. As to the proceedings where a

1842.
Affidavit in support (c).

Formal parts: see ante, No. 9.

1. *Prove service of the order directing the appointment of a receiver, and directing possession to be delivered to him: see ante, No.* 48 (*d*).

2. *Prove service of further order, or Chief Clerks' certificate, completing the appointment: see ante*, No. 48, *or* 929 (*d*).

3. *Show means of knowledge.*

1843.
Writ of assistance (e).

Præcipe: } See *ante*, Nos. 962, 963: which can be readily
The Writ: } adapted.
Indorsement thereon: The same as No. 964, *ante.*

1844.
Notice to tenant to attorn to receiver (f).

In Chancery.

(*Title, and reference to the record.*)

I, L. M., of (*residence and addition*), the receiver appointed in this cause of the rents and profits of the real estate of A. B., the testator in the bill in this cause named [*or as may be*], hereby give you notice and require you to attorn and become tenant to me for (*Describe the property; as thus:* the messuage or tenement, garden, and outbuildings, with the appurtenances, situate at A., in the county of B.), now occupied by you, and for such other part or parts of the said real estate as is or are in your occupation; and to pay to me your rent in arrear, and growing rent, for the said premises. Dated this —— day of ——, 187—.

L. M.

To W. P., of (*residence and addition*).

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party to the record refuses to deliver up possession to a receiver, see Dan. Pr. 1590.

(*c*) See Dan. Pr. 1590; and notes to 961, *ante.*

(*d*) For the mode of serving orders, see Dan. Pr. 903, *et seq.* The copy served in this case need not be indorsed with the notice referred to in Ord. XXIII. 10, as varied by Ord. 7 Jan. 1870, r. 1 (*ante*, No. 922): see Dan. Pr. 1590, n. (*s*); Seton, 1229. Where no time for delivery of possession is named in the order, a further order limiting a time must be obtained and served: Dan. Pr. 1590, n. (*s*). As to such further order, see *ib.* 904; and *ante*, No. 926.

(*e*) See Dan. Pr. 1590; and notes to Nos. 962—964, *ante.*

(*f*) See Dan. Pr. 1590, 1591. As to attornment in general, see Woodfall, 216—219; and to a receiver in Chancery, *ib.* 51; Dan. Pr. 1590—1592; and to sequestrators, see *ante*, Nos. 952—955.

1845.

Attornment thereon (*g*).

In Chancery.

(*Title, and reference to the record.*)

I, W. P., of (*residence and addition*), attorn and become tenant to L. M., the receiver appointed in this cause, for (*Describe the property: see ante*, No. 1844), as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said L. M. the sum of (one shilling) for and on account, and in part payment of, the said rent. Dated this —— day of——, 187—.

W. P.

Witness:

V. N., of (*residence and addition*).

1846.

Notice of motion, for tenant to attorn, and pay rent (*g*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that W. P., of (*residence and addition*), may be ordered, within seven days after service, to attorn and become tenant to L. M., the receiver appointed in this cause, for, or in respect of, the (*Describe the property: see ante*, No. 1844), now occupied by the said W. P.; and pay his rent in arrear, and growing rent for the same, to the said L. M.

1847.

Notice of motion, for tenant to attorn, and for occupation rent to be set (*h*).

Proceed as in No. 1846, *ante, to* the said W. P.*; and continue thus:*

And that an annual value, by way of rent, may be set upon the said premises during the time the said W. P. has been in the possession or occupation thereof; and that the said W. P. may be charged therewith.

1848.

Affidavit in support of motion to attorn (*i*).

Formal parts: see ante, No. 9.

1. 2. *Same as ante*, No. 1842, *par.* 1. 2.
3. *Prove service of notice to attorn: see ante*, No. 47.
4. *Prove refusal to attorn.*
5. *Show means of knowledge.*

(*g*) See Dan. Pr. 1590, 1591.

(*h*) *Ibid.*, 1591. For order in like case, see *Venables* v. *Farmer*, M. R. 14 Mar. 1867, Reg. Lib. B. 649. As to fixing an occupation rent, where the tenant in possession has not agreed to pay any specific rent, see Dan. Pr. 1591.

(*i*) See Dan. Pr. 1591.

1849.
Attachment on default (*k*).

Præcipe :
The Writ :
Indorsement thereon : } The same as Nos. 932—934, *ante* ; but describe the contempt correctly.

1850.
Affidavit in support (*l*).

Formal parts : see ante, No. 9.
1. *Prove service of order to attorn : see ante*, No. 929.
2. *Prove non-compliance.*
3. *Show means of knowledge.*

1851.
Notice of motion, or summons, to pay arrears of rent to receiver (*m*).

Formal parts : see ante, No. 55, *or* 60.
on the part of the plaintiff [*or as may be*], that W. D., of (*residence and addition*), may be ordered, within seven days after service, to pay to L. M., the receiver appointed in this cause, the sum of £——, due from the said W. D. for arrears of rent of the (*Describe the property : see ante*, No. 1844), in respect of his occupation thereof from the —— 187—, to the—— 187—.

1852.
Notice of motion, or summons, for an examination *pro interesse suo* (*n*).

Formal parts : see ante, No. 55, *or* 60.
on the part of G. H., of (*residence and addition*), that an inquiry may be made whether the said G. H. has any and what interest in the real estate [*or as may be*] taken possession of by L. M., as the receiver appointed in this cause, or in any and what part thereof.

(*k*) See Dan. Pr. 1591, and notes to Nos. 932—934, *ante*.

(*l*) See Dan. Pr. 1591.

(*m*) *Ibid.*, 1591—1596. For orders in like case, on motion, see *Hobson* v. *Shearwood*, M. R. 1 Dec. 1854, Reg. Lib. A. 192 : 19 Beav. 575 ; *Venables* v. *Farmer*, M. R. 14 Mar. 1867, Reg. Lib. B. 650 ; and on summons, see *O'Brien* v. *Davis*, V. C. M. at Chambers, 23 July, 1870, Reg. Lib. B. 2369.

(*n*) See Dan. Pr. 1593. As to disturbing the possession of a receiver, see *ib.* 1592—1593.

Section II.—Powers, Duties, and Liabilities of Receivers (*o*).

1853.

Summons for leave for receiver to distrain (*p*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be at liberty to distrain upon the goods and chattels of E. F., of (*residence and addition*), for the sum of £——, being arrears of rent due from him on the ——, 187—, in respect of the (*Describe the property: see ante*, No. 1844).

If so: and that the said distress may be made in the name of the defendant C. D.; and that he may be indemnified in respect thereof out of the estate of the testator A. B. [*or as may be*].

1854.

Summons for leave for receiver to bring an action for arrears of rent (*q*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be at liberty to commence and prosecute an action, in one of Her Majesty's Superior Courts at Westminster, in the name of the defendant W. J., as executor of the will of G. S., the testator in this cause, against A. B., to obtain payment of £——, due for rent from the said A. B. to the said testator's estate; and that the defendant W. J. may be indemnified therein out of the said estate.

1855.

Notice of motion, for payment to receiver of monies received by defendant (*r*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that the defendant E. A. may be ordered, on or before the ——, 187—, or subsequently within four days after service, to pay to L. M., the receiver appointed in this cause, all monies received by the said defendant since the appointment of such receiver: the amount to be verified by affidavit.

(*o*) See Dan. Pr. 1596—1600; Kerr on Receivers, 135—159.

(*p*) Dan. Pr. 1596. For form of order to distrain in a defendant's name, see Seton, 1013, No. 3. As to distresses for rent, see Add. Cont. 316; Dixon, 194—230; L. C. Conv. 260—266; Woodfall, 394—407. As to notices to quit, see Woodfall, 298—319, 1045, 1046.

(*q*) See *Bellis* v. *Jones*, V. C. S. at Chambers, 18 Jan. 1864, Reg. Lib. A. 71; and see Dan. Pr. 1598.

(*r*) *Lockwood* v. *Ellam*, V. C. S. 20 Dec. 1866, Reg. Lib. A. 2640; and see Dan. Pr. 1596.

1856.
Summons for leave for receiver to cut and sell timber (*s*).

Formal parts : see ante, No. 60.
on the part of the plaintiff, that L. M., the receiver appointed in this cause, may be at liberty to cut and fell the trees specified in the affidavit of C. D., filed the ——, 187—, and the exhibit marked A. thereto ; and to sell the same by public auction, according to the usual particulars and conditions of sale in like case ; and that the said receiver may receive the purchase monies for the said trees, and bring the amount thereof into his account as such receiver.

1857.
Other summonses, relating to the management of property comprised in a receivership (*t*).

See the following Forms, *ante* : which can be readily adapted to a receivership :—

Action : For leave to bring, 1322 ; or defend, 1325 ; or compromise, 1329.

Business : For leave to carry on, 1327.

Claim : For leave to compromise, 1329.

Debts : For leave to pay, 1328.

Enfranchisement : To approve agreements for, 1333.

Lease : For leave to obtain renewal of, 1335.

To approve agreement to grant, 1336 (*u*).

Outstanding estate : For leave to convert, 1326.

Repairs, or Drainage works : For leave to execute, 1330 (*x*).

Suit : For leave to institute, 1322 ; or defend, 1324 ; or compromise, 1329.

(*s*) *Earl of Harrington* v. *Countess of Harrington*, V. C. S. at Chambers, 4 Mar. 1864, Reg. Lib. A. 469 ; and see Dan. Pr. 1600 ; and *ante*, No. 1457, and note thereto.

(*t*) See Dan. Pr. 1599, 1600 ; and notes to the Forms above referred to.

(*u*) As to the power of a receiver to create tenancies, and grant leases, see Dan. Pr. 1597 ; 1 Platt on Leases, 389 ; Woodfall, 51.

(*x*) As to repairs by receivers, see Dan. Pr. 1598.

1858.

Affidavit by receiver, verifying his account (*a*).

SECTION III.—RECEIVERS' ACCOUNTS (*z*).

In Chancery.

(*Title, and reference to the record.*)

I, L. M., of (*residence and addition*), the receiver appointed in this cause, make oath and say, as follows:

1. The account contained from page —— to page ——, both inclusive, in each of the two several books marked with the several letters A. and B., produced and shown to me at the time of swearing this my affidavit (*b*), and purporting to be my account of the rents and profits of the real estate, and of the outstanding personal estate, of A. B., the testator [*Or*, intestate] in this cause (*c*), from the —— day of ——, 187—, to the —— day of ——, 187—, both inclusive, doth contain a true account of all and every sum and sums of money received by me, or by any other person or persons by my order, or, to my knowledge or belief, for my use, on account or in respect of the said rents and profits (*c*), accrued due on or before the —— day of ——, 187— (*d*), or on account or in respect of the said personal estate (*c*): other than and except what is included as received in my former account [*Or*, accounts] sworn to by me.

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. A. B. and C. D.: who are sureties for me as such receiver: are respectively living; and are respectively resident in Great Britain; that is to say: the said A. B. at (*State where*), and the said C. D. at (*State where*); and they have not, nor has either of them, been adjudged bankrupt, or become insolvent; and they have not, nor has either of them, entered into any deed of arrangement, composition, or inspectorship between them and their creditors respectively, or any trustee on behalf of such creditors [*or as may be* (*dd*)].

Sworn (*&c.: see ante*, No. 12).

(*z*) See Dan. Pr. 1600—1612; Ord. XXIV. 2; Regul. 8 Aug. 1857, r. 16; Kerr on Receivers, 168—180.

(*a*) See Dan. Pr. 1600—1601; Regul. 8 Aug. 1857, r. 24, and Sched. No. 17. The affidavit is not made till after the account has been gone through and allowed at the Judge's Chambers.

(*b*) The affidavit must refer to the account as an exhibit, and not be annexed to it: Ord. XXIV. 3; Dan. Pr. 1601. For form of memorandum of exhibit, see *ante*, No. 43.

(*c*) In describing the account, the language of the decree or order appointing the receiver should be followed.

(*d*) The day to which the account is made up.

(*dd*) This clause, or a clause to the like effect, is required, at the Master of the Rolls' Chambers, to be inserted in every affidavit by a receiver verifying his account.

1859.
Account of receiver: referred to in No. 1858 (*e*).

In Chancery.

(*Title, and reference to the record.*)

The first [*or as may be*] account of L. M., the receiver appointed in this cause by [*Or*, pursuant to] an order made in this cause, dated the —— day of ——, 187—, to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator [*Or*, intestate] in this cause named (*f*): from the —— day of ——, 187—, to the —— day of ——, 187—.

REAL ESTATE.—RECEIPTS.

No. of item.	Date when received.	Tenants' names.	Description of premises.	Annual rent.	Arrears due at —, 187—.	Amount due at —, 187—.	Amount received.	Arrears remaining due.	Observations.
				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	(*g*).
1		John Jones .	Home Farm, in the Parish of Norton, in the County of Oxford.						
2		Thomas Jones .	House, at Norton aforesaid.						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of item.	Date of payment or allowance.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount.
				£ s. d.
1		Sun Fire Office .	One year's insurance of —, due — . .	
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones	
3		James Francis .	Allowance for a half year's income tax, due —. . . .	
			Total payments £	

(*e*) See Dan. Pr. 1600; Regul. 8 Aug. 1857, r. 24, and Sched. No. 14. As to the receiver's salary and allowances, see Dan. Pr. 1594—1596. As to charging the receiver with interest, and disallowing his salary, on default, see Dan. Pr. 1603; Ord. XXIV. 2; Regul. 8 Aug. 1857, r. 16. As to furnishing copies of the account, see Dan. Pr. 1600. As to the mode of substantiating and completing the account, and as to the parties entitled to costs, see Dan. Pr. 1601. For scale of costs, see *ante*, Nos. 1569, 1570.

(*f*) The description of the account should accord with the order appointing the receiver.

(*g*) In the first account, it should be stated in this column how each tenant holds; and every alteration should be noticed in the subsequent accounts. In this column should also be entered any remarks the receiver may think proper

Receipts on Account of Personal Estate.					Payments and Allowances on Account of Personal Estate.				
No. of item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.	No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				£ s. d.					£ s. d.

Summary.

	£ s. d.	£ s. d.
Amount of balance due from receiver on account of real estate on last account		
Amount of receipts on the above account of real estate		
	£ s. d.	
Balance of last account paid into Court		
Amount of payments and allowances on the above account of real estate		
Amount of receiver's costs of passing this account as to real estate		
Balance due from the receiver on account of real estate		£

	£ s. d.	£ s. d.
Amount of balance due from receive on last account of personal estate		
Amount of receipts on the above account of personal estate		
	£ s. d.	
Balance of last account paid into Court		
Amount of payments and allowances on the above account of personal estate		
Amount of receiver's costs of passing this account as to personal estate		
lance due from the receiver on account of personal estate		£

1860. Summons to proceed on account (*h*).

Formal parts: see ante, No. 60.

on the part of L. M., the receiver appointed in this cause, to proceed on his first [*or as may be*] account.

1861. Chief Clerk's certificate of allowance of account (*i*).

(*Title, and reference to the record.*)

In pursuance of the directions given to me by the Master of the Rolls [*Or*, Vice-Chancellor ——], I hereby certify that in pursuance of the decree [*Or*, order] made in this cause, dated the —— day of ——, 187—, and the order [*Or*, Chief Clerk's certi-

to make as to the arrears of rent, the state of repairs, or otherwise: Bloxam, 51; Dan. Pr. 1600.

(*h*) See Dan. Pr. 1600. The summons should be served on such parties as are entitled to attend the passing of the account: *ib.* On leaving the first account, a copy of the order appointing the receiver, certified by the solicitor to be a true copy thereof, must be left at Chambers, if not previously done: *ib.* n. (*p*). For form of such certificate, see *ante*, No. 1225.

(*i*) See Dan. Pr. 1600, 1601. As to the ordinary and percentage fees payable on the certificate, see *ante*, No. 1554 (1). As to the time for, and mode of

ficate], dated the —— day of ——, 187—, L. M., the person appointed to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D., the testator [*Or*, intestate] in this cause named [*or as may be*], has left in the Chambers of the said Judge his first [*or as may be*] account as such receiver of his receipts and payments and allowances in respect of the said rents and profits, and outstanding personal estate [*or as may be*], from the time of his appointment [*Or*, from the —— day of ——, 187—, to the —— day of ——, 187—]; and such account has been passed and duly entered pursuant to the 24th of the Consolidated Orders of this Court; and is verified by the affidavit of the said receiver filed the —— day of ——, 187—.

The said receipts amount altogether to the sum of £——; and the said payments and allowances to the sum of £——; and there is due from the said receiver, as the balance of such account, the sum of £——: which sum of £——, in pursuance of the direction contained in the said decree [*Or*, order] of the —— day of ——, 187—, is to be paid by the said L. M. into the bank to the credit of this cause, to the account entitled "the real estate account" [*or as may be*], on or before the — day of ——, 187—.

Dated (*&c.: see ante*, No. 1511).

1862.

Memorandum of allowance of account (*k*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers. } ——, 187—.

This account [*Or*, This duplicate account] has been allowed: as appears by my certificate dated the —— day of ——, 187—.

R. M., Chief Clerk.

Summons, by receiver, for further time to leave his account (*l*).

Formal parts: see ante, No. 60.

on the part of L. M., the receiver appointed in this cause, that he may have —— days further time to leave in my Chambers his (first) account as such receiver, pursuant to the order dated the —— day of ——, 187—.

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applying to take the opinion of the Judge on, or to vary the certificate, see Dan. Pr. 1219, 1223, 1601; Ord. XXXV. 54.

(*k*) See Dan. Pr. 1601. The memorandum is written at the foot of the sworn account. As to depositing the receiver's book at the Record and Writ Clerk's office, on the completion of the receivership, see Dan. Pr. 1601; Ord. XXIV. 4.

(*l*) See Dan. Pr. 1600; Ord. XXIV. 2; XXXV. 23; XXXVII. 17, 18.

1864.

Summons, for a short, or four day order, to compel receiver to leave account (*m*).

Formal parts : *see ante*, No. 60.
on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be ordered, within (four) days after service, to leave in my Chambers his (first) account as such receiver, pursuant to the order dated the —— day of ——, 187— ; and that the said L. M. may be ordered to pay the costs of this application.

1865.

Summons by receiver, for leave to pay money into Court on account (*n*).

Formal parts: see ante, No. 60.
on the part of L. M., the receiver appointed in this cause, that he may be at liberty to pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, part of the rents and profits, and £——, part of the outstanding personal estate, respectively received and got in by him as such receiver ; and that his costs of this application may be retained by him, and allowed in his accounts.

1866.

The like, to pay in his balance (*o*).

Formal parts : see ante, No. 60.
on the part of L. M., the receiver appointed in this cause, that he may be at liberty to pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, by the Chief Clerk's certificate dated the ——, 187—, certified to be due from him on passing his (first) account as such receiver, as therein mentioned. And that the applicant's costs of this application may be retained by him, and allowed in his next account [*or as may be*].

1867.

Summons, to compel receiver to pay balance into Court (*p*).

Formal parts : see ante, No. 60.
on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be ordered, on or before the —— day of ——, 187—, or subsequently, within four days after service, to pay into the bank, to the credit of this cause [*or as may be*], the sum of £——, by the Chief Clerk's certificate dated the ——, 187—, certified to be due from him on passing his (first) account therein mentioned ; and that the said L. M. may be ordered to pay the costs of this application.

(*m*) See Dan. Pr. 1602. For order in like case, see *Whipham* v. *Whipham*, V. C. J. at Chambers, 14 April, 1870, Reg. Lib. B. 1133; and see Seton, 1018, No. 1. For the mode of enforcing the order, see Dan. Pr. 1603 ; and see *ante*, No. 922, *et seq.*

(*n*) See Dan. Pr. 1602. For the mode of paying money into Court, see *ib.* 1636 ; and see *post*, No. 1889.

(*o*) As to when this application may be necessary, see Dan. Pr. 1602.

(*p*) See Dan. Pr. 1602; Ord. XXIV. 2; XXXV. 23. For order in like case

1868.

Notice of motion, for committal of receiver, for not obeying order to leave account, or pay money (*r*).

Formal parts: see ante, No. 55.

on the part of the plaintiff, that L. M., the receiver appointed in this cause, may be committed to prison for a contempt of this honourable Court, in (*State nature of contempt; as thus:*

not leaving his sixth account as such receiver in the Chambers of the said Judge, pursuant to the order dated the —— day of ——, 187—.

Or, not paying the sum of £—— into the bank, to the credit of this cause, pursuant to the order dated the —— day of ——, 187—).

1869.

Affidavit in support (*s*).

Formal parts: see ante, No. 9.

1. *Prove service of order to leave account, or pay balance: see ante*, Nos. 48, 51, 1285, 1864, 1867.

2. *Prove service of the notice of motion to commit: see ante*, Nos. 47, 51, 1868.

3. *Prove default: see ante*, No. 1285, par 3 (*t*).

1870.

Summons for leave for representative of deceased receiver to pass his final account (*u*).

Formal parts: see ante, No. 60.

on the part of E. F., the executor of the will [*Or*, administrator of the effects] of L. M., late the receiver in this cause, that he

Or, on the part of the plaintiff, *&c.*, that E. F., the executor, (*&c.: as above*),

may be at liberty to carry in and pass the accounts of the said L. M., as such receiver, from the foot of his last certified account, to the time of his decease; and to pay the balance which may be certified to be due from his estate into the bank, to the credit of this cause [*or as may be*]. And that thereupon the recognizance dated the ——, 187—, entered into by the said L. M., together with C. D. and E. F. as his sureties, may be vacated; and that the costs of the said E. F. of this application, and consequent thereon, as between solicitor and client, may be retained by him, and be allowed on passing the said accounts.

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see Seton, 1018, No. 1. For the mode of enforcing the order, see Dan. Pr. 1603; and see *ante*, No. 922, *et seq.*

(*r*) See Dan. Pr. 1603; and *Re Bell, Foster* v. *Bell*, Law Rep. 9 Eq. 172, V. C. S., there cited.

(*s*) See Dan. Pr. 1603.

(*t*) Where the default consists in not paying money into Court, it must be proved by the Accountant-General's certificate thereof: see Dan. Pr. 1603.

(*u*) See Dan. Pr. 1605. For orders in like case, see *Chandler* v. *Brittan*, V. C. S. at Chambers, 17 Dec. 1866, Reg. Lib. A. 2770; *O'Toole* v. *Brown*, M. R. at Chambers, 7 Feb. 1870, Reg. Lib. B. 297; and see Seton, 1022.

1871.

Summons for leave to put recognizance in suit (*x*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that he may be at liberty

Or, that the defendant C. D., the executor of the will of A. B., the testator in this cause—*or as may be*—may be ordered

to put in suit the recognizance, dated the —— day of ——, 187—, entered into by L. M., the (late) receiver in this cause, together with C. D. and E. F., his sureties.

1872.

Præcipe for a writ of *scire facias*, on a receiver's recognizance (*y*).

(*County*).—Writ of *scire facias* [*Or, testatum scire facias*]: for (*Names of conusees*), against (*Name of conusor sued*), on a recognizance.

Returnable immediately [*or as may be*].

A. B., of (*address*),
Plaintiff's attorney.
——, 187—.

1873.

Writ of *scire facias* (*z*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff of Middlesex (*a*), greeting:

Whereas S. N., of (*residence and addition*), heretofore, to wit on the —— day of ——, in the —— year of our reign (*Date of recognizance*), before us in our Chancery personally appearing, acknowledged himself to owe to the Right Honourable Sir J. R., knight, the Master of the Rolls, and the Honourable Sir R. T. K., knight, the senior Vice-Chancellor of the said Court of Chancery (*b*), the sum of £——, of good and lawful money of Great Britain: to be paid to the said Sir J. R. and Sir R. T. K., or one of them, or the executors or administrators of them, or one of them; and unless he should pay the same, the said S. N. did will and grant, for himself and for his heirs, executors, and admini-

(*x*) See Dan. Pr. 1605. For order in like case, see Seton, 1018, No. 3.

(*y*) See Dan. Pr. 1608. The writ is prepared on parchment; and will be sealed in the Petty Bag Office, on filing the *præcipe*, and on production of the order giving leave to sue on the recognizance (*ante*, No. 1871), and of an office copy of the recognizance: *ib.* A fee of 20*s.* is payable on sealing the writ: *ib.* 1607, n. (*q*). As to the course of procedure in the Petty Bag Office in general, and on a receiver's recognizance in particular, see Dan. Pr. 1606—1612; "Petty Bag Office and Enrolment in Chancery Amendment Act, 1849" (12 & 13 Vic. c. 109); Gen. Ord. Petty Bag, 29 Dec. 1848, and 3 Aug. 1849: 11 Beav. xxi.; Chitty's Arch. 1751—1761; and see Abbott's Forms of Writs (1849). As to the Petty Bag Office, see Dan. Pr. 1606, n. (*m*).

(*z*) *Romilly* v. *Nicholls*, 27 Dec. 1862; and see Abbott, 99; Dan. Pr. 1608.

(*a*) The writ is always thus directed in the first instance: although the defendant lives in another county: Dan. Pr. 1608.

(*b*) As to the course, where the conusees are dead, see Seton, 1019.

strators, that the aforesaid sum of £—— should be levied, recovered, and received of and from him, and of and from all and singular his manors, messuages, lands, tenements, and hereditaments, goods and chattels, wheresoever the same should or might be found: as by the inspection of the recognizance of such acknowledgment, remaining in our Chancery at Westminster, more fully appears: Nevertheless the said S. N. did not pay the said sum of £—— to the said Sir J. R. and Sir R. T. K., or to either of them; and the said sum of £—— still remains wholly unpaid, as it is alleged: Therefore we command you, that by good and lawful men of your bailiwick, you make known to the said S. N. that he be before us in our Chancery, immediately after the execution hereof (*c*): wheresoever it shall then be: to show if he hath or knoweth anything to say for himself why the said sum of £—— should not be levied, and to the said Sir J. R., and Sir R. T. K. delivered, according to the force, form, and effect of the recognizance aforesaid. And have you there then the names of those by whom you shall have made it known to him, and this writ. Witness ourself at Westminster the 27th day of December, in the 26th year of our reign (*d*).

Romilly. Abbott (*e*).

1874.

Writ of *testatum scire facias* (*f*).

Victoria (*&c.: see ante*, No. 313).

To the Sheriff of ——(*Insert name of county in which the defendant is actually resident: see ante*, No. 308), greeting:

Whereas (*Proceed as in* No. 1873, *ante, to* alleged; *and continue thus*):

And whereas we lately commanded our Sheriff of Middlesex, that, by good and lawful men of his bailiwick, he should make known to the said S. N., that he should be before us in our Chancery, at a certain day now past, wheresoever it should then be, to show if he had or knew anything to say for himself why the said sum of £—— should not be levied, and to the said Sir J. R., and Sir R. T. K. delivered, according to the form and effect of the recognizance aforesaid: And our said Sheriff: to wit, J. C. L., esquire, and H. J., esquire, Sheriff of Middlesex aforesaid: returned to us, in our Chancery at Westminster, that the said S. N. had not anything in his bailiwick whereby he could give him notice, as he the said Sheriff was commanded: nor was the said S. N. found in the same: And whereas we are given to understand that the said S. N. has sufficient in your

(*c*) As to the return day, see Dan. Pr. 1609; 12 & 13 Vic. c. 109, s. 27.

(*d*) The writ is tested on the day on which it is sealed: Dan. Pr. 1608; 12 & 13 Vic. c. 109, s. 26; Gen. Ord. Petty Bag, 29 Dec. 1848, r. 6.

(*e*) Name of the then Clerk of the Petty Bag. The present Clerk is Archibald Murray, esquire.

(*f*) *Romilly* v. *Nicholls*, 27 Dec. 1862; and see Abbott, 100; Dan. Pr. 1609; and notes to No. 1873, *ante*.

bailiwick whereby you may give him notice: Therefore, we command you, that by good and lawful men of your bailiwick, you make known to the said S. N., that he be before us in our Chancery, on the 5th day of January, 1863: wheresoever it shall then be: to show (*Continue as in* No. 1873, *ante, to the end*).

1875.

Indorsement on writ (*g*).

In the (*Insert name of the Court of Common Law in which the future proceedings are intended to be taken; as thus:* Queen's Bench.—*Or,* Common Pleas.—*Or,* Exchequer of Pleas).

S. W. J., of (*address*),
Plaintiff's attorney.

1876.

Præcipe for appearance (*h*).

In the Petty Bag.—In Chancery.

Sir J. R. and another against N. } E. L. R., attorney for the defendant S. N., appears for him.

Dated this —— day of ——, 187—.

(*Name and address of attorney.*)

1877.

Notice of appearance (*i*).

(*Title, as in* No. 1876, *ante.*)

I have this day entered an appearance for the defendant S. N. Dated this —— day of ——, 187—.

E. L. R., of (*address*),
Attorney for the said defendant.

To Mr. S. W. J., attorney for the plaintiffs.

1878.

Declaration on *scire facias* (*k*).

In the Petty Bag.—In Chancery,
The 9th day of January, A.D. 1863 (*l*).

Middlesex to wit (*m*).—Our Lady the Queen sent to her Sheriff of B. her writ close, in these words: Victoria (*&c.: Set out the writ of* (*testatum*) *scire facias, verbatim: see ante,* No. 1873, *or* 1874):

At which day, that is to say, on the said 5th day of January, in the year aforesaid, before our said Lady the Queen, in her

(*g*) See Dan. Pr. 1608.

(*h*) *Ibid.*, 1609. A fee of 10*s.* is payable for entering the appearance: *ib.* 1607, n. (*q*). As to ruling defendant to appear, and judgment by default, see *ib.* 1609.

(*i*) See Dan. Pr. 1609.

(*k*) *Romilly* v. *Nicholls,* 9 Jan. 1863; and see Dan. Pr. 1609; Abbott, 101.

(*l*) As to the date, see Dan. Pr. 1608; Gen. Ord. Petty Bag, 29 Dec. 1848, r. 6.

(*m*) The venue must always be laid in Middlesex: Dan. Pr. 1609.

Chancery at Westminster aforesaid, came the aforesaid Sir J. R., and Sir R. T. K., in their proper persons; and the said Sheriff, to wit R. C., esquire, Sheriff of B. aforesaid, now here returns to our said Lady the Queen in her Chancery, that by virtue of the said writ to him directed, he had, by W. H. and J. S., good and lawful men of his bailiwick, given notice to the said S. N. to be and appear before our said Lady the Queen in her Chancery, on the day in the said writ mentioned, to show cause as by the said writ he was required: as he the said Sheriff was commanded. And thereupon the said S. N., by E. L. R., his attorney, comes. Whereupon the said Sir J. R. and Sir R. T. K. pray, that execution may be adjudged to them against the said S. N. for the said sum of £——: according to the force, form, and effect of the said recognizance.

1879.

Indorsement, on declaration, of notice to plead (*n*).

In the Petty Bag.—In Chancery.

Sir J. R. and another
v.
N.
} Declaration.

Messrs. G. R. & R.,
Defendant's attorneys or agents.

The defendant is to plead hereto in eight days: otherwise judgment.

Dated this —— day of ——, 187—.

Yours, *&c.*,
S. W. J., of (*address*),
Plaintiffs' attorney.

1880.

Plea of *nul tiel record* (*o*).

(*Court and date: as in* No. 1878, *ante.*)

N.
ats.
Sir J. R. and another.
} The defendant, by E. L. R. his attorney, says, that there is not any record of the said recognizance, in the declaration mentioned, remaining in the said Court.

1881.

Replication thereto (*p*).

(*Court and date: as in* No. 1878, *ante.*)

Sir J. R. and another,
v.
N.
} The plaintiffs say, that there is a record of the said recognizance remaining in the said Court of Chancery, as the plaintiffs

(*n*) *Romilly* v. *Nicholls*, 9 Jan. 1863; and see Dan. Pr. 1609.

(*o*) See *Romilly* v. *Nicholls*, 26 Jan. 1863. As to pleas, demurrers, and subsequent pleadings, obtaining further time to plead, making up and delivering the issue, the trial, and subsequent proceedings, see Dan. Pr. 1609—1612; 12 & 13 Vic. c. 109, ss. 30—37, 39—46. For the practice as to summoning a jury at law, see Dan. Pr. 949, *et seq.*

(*p*) *Romilly* v. *Nicholls*, 26 Jan. 1863. The defendants in that case after-

have above alleged. And the plaintiffs pray that the said record may be seen and inspected. And because the plaintiffs have not the said record now here in Court, it is commanded to them that they have the same here on Friday, the 30th day of January, 1863. The same day is given to the defendant, at the same place.

1882.

Notice of motion, or summons, by surety, to stay action on the recognizance (*q*).

Formal parts: see ante, No. 55, *or* 60.

on the part of A. B., in the order dated the —— day of ——, 187—(*Order to put recognizance in suit*), named, that (*State terms proposed; as thus:*

on payment by him into the bank, to the credit of this cause, on or before the —— day of ——, 187—, of the sum of £——, and on payment also by him of the costs of obtaining the said order, and of this application, and of the action now pending in the Petty Bag office against the said A. B., upon the recognizance in the said order mentioned),

all further proceedings against the said A. B., upon the recognizance in the said order mentioned, may be directed to be stayed.

Section IV.—Discharge of Receiver (*r*).

1883.

Petition to discharge receiver, and vacate recognizance (*s*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. *Recite decree or order appointing receiver, subject to his giving security, and the Chief Clerk's certificate of such security having been given—Or the decree or order directing a proper person to be appointed receiver, and the subsequent order appointing such person: see ante*, Nos. 1826, 1836, 1838.

2. *State to what time the receiver has passed his accounts, and accounted for his balances; as thus:* Pursuant to the said decree, *&c.*, the said L. M. has passed his accounts as such receiver to the —— day of ——, 187—; and has paid, in the manner thereby directed, the balances from time to time certified to be due from him on his said accounts.

3. *State why a receiver has ceased to be necessary: as thus:* By an order dated the —— day of ——, 187—, C. D. and E. F. have been appointed trustees of the real estate of the testator

wards obtained leave to plead certain equitable pleas; but the action was compromised: see *Re Ward, Simmons* v. *Rose*, 31 Beav. 1.

(*q*) See Dan. Pr. 1612, 1616.

(*r*) *Ibid.*, 1613—1614; Kerr on Receivers, 181—186.

(*s*) Dan. Pr. 1614.

G. H., and such estate has been conveyed to and vested in them, upon the trusts of his will. By reason thereof, it is expedient that the appointment of a receiver of the said estate should be discontinued.

Your petitioner therefore humbly prays, that the said L. M. may be discharged from being receiver as aforesaid; and that he may be ordered to pass his final account as such receiver, and pay the balance certified to be due from him thereon into the bank, to the credit of this cause [*or as may be*]; and that thereupon the recognizance, dated the ——, 187—, entered into by the said L. M., together with C. D. and E. F. as his sureties, may be vacated.

Add, if desired, a clause as to the costs; as thus: And that the costs of all proper parties of this application, and consequent thereon, may be taxed as between solicitor and client; and that the said L. M. may be directed to pay such costs; and be allowed the same on passing his said account.

Or that your lordship (*Continue as in* No. 57, *ante, to the end; and add foot note*, No. 58).

1884.

Notice of motion, or summons, to discharge receiver (*t*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be discharged; and that he may be ordered (*Continue as in prayer of* No. 1883, *ante, to* said account).

1885.

Summons to vacate receiver's recognizance (*u*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the recognizance dated the —— day of ——, 187—, entered into by L. M., the receiver in this cause, together with C. D. and E. F. as his sureties, may be vacated.

(*t*) See Dan. Pr. 1614. For orders in like case on summons, see *Bromley* v. *Beal*, M. R. at Chambers, 28 Jan. 1864, Reg. Lib. A. 385 (by consent); *Pugh* v. *Beal*, V. C. M. at Chambers, 9 Nov. 1870, Reg. Lib. B. 2734.

(*u*) See Dan. Pr. 1614. For order in like case, see *Godfrey* v. *Whitehead*, V. C. S. at Chambers, 10 April, 1865, Reg. Lib. A. 879. The order is not, it seems, now made on petition of course: even by consent.

1886.

Notice of motion, by defendant, for a stay of proceedings in, and payment of his costs of, a suit for a receiver, *pendente lite* (*x*).

Formal parts: see ante, No. 55.

on the part of the defendant A. B., that all further proceedings in this cause as against the said defendant may be stayed; and that the plaintiff may be ordered to pay to the said defendant his costs of this suit: including his costs of this application: such costs to be taxed in case the parties differ.

Section V.—Liabilities and Rights of Sureties (*y*).

1887.

Summons, for receiver to give a new security, on death or bankruptcy of a surety (*z*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be ordered to give a new security duly to account for what he shall receive as such receiver: C. D., one of his sureties hereinafter named, having died [*Or*, having been adjudged bankrupt—*or as may be*]; and that such security may be approved by the Judge. And that the said L. M. may be ordered to pass his accounts up to the date of such new security; and pay the balance certified to be due from him thereon into the bank, to the credit of this cause [*or as may be*]. And that, upon such new security being given, and payment in manner aforesaid of the said balance, the recognizance dated the ——, 187—, entered into by the said L. M., together with the said C. D. and E. F. as his sureties, may be vacated.

1888.

Summons by surety, for leave to attend the passing of receiver's account (*a*).

Formal parts: see ante, No. 60.

on the part of C. D., one of the sureties in this cause for L. M., the receiver appointed therein, that the said C. D. may be at liberty to attend, at his own expense, the passing of the accounts of the said L. M. as such receiver [*or as may be*].

(*x*) *Barton* v. *Rock* (No. 2), M. R. 19 June, 1856; Affd. by L.JJ. 17 July, 1856: Reg. Lib. (1855), A. 1347, 1348; 22 Beav. 376, 379, n.; and see Dan. Pr. 1573.

(*y*) See Dan. Pr. 1615—1616; Kerr on Receivers, 186—190.

(*z*) See Dan. Pr. 1585. For order in like case, see Seton, 1049, No. 4.

(*a*) See Dan. Pr. 1616.

CHAPTER XL.

PAYMENT OF MONEY, AND TRANSFER OF STOCK, INTO COURT (*a*).

See *ante*, No. 1307.

1889.
Summons, for transfer of stock, and payment of cash, into Court, and investment(*b*).

(*a*) As to when a payment or transfer into Court will be directed, see Dan. Pr. 1619—1628; and as to the mode of application, see *ib.* 1628—1645. As to the constitution of the Accountant-General's department, and forms of business in use therein, see Rep. Chan. Funds Com. (1864), *passim*. As to the funds of the Court of Chancery: including monies and securities of individual suitors: the suitors' fund: the suitors' fee fund: and surplus fee fund: the charges thereon, and the provisions for their custody and management: see *ib.* xxxi., *et seq.*; and see The Courts of Justice Building Act, 1865 (28 & 29 Vic. c. 48); and The Courts of Justice (Salaries and Funds) Act, 1869 (32 & 33 Vic. c. 91). For the mode of describing, in a decree or order, the funds or securities to be dealt with, and the persons by or to whom the same are to be paid, transferred, or delivered out, see Dan. Pr. 865, 866, 1633, 1634; Ord. XXIII. 3—6; and see Rep. Chan. Funds Com. lii.—liii. For forms, see Seton, 58, *et seq.* 67, 68, 71, 72, and 205, No. 13. As to the mode of entitling accounts in the Accountant-General's books, see Dan. Pr. 1635; Seton, 63. For a collection of forms of headings of accounts, see 12 Beav. 210, n. As to voluntary and negative certificates by the Accountant-General, transcripts of accounts, and searches in his books, see Dan. Pr. 1635, 1636; Ord. 12 Feb. 1863; Rep. Chan. Funds Com. xviii. xxvi. For form of a voluntary certificate, see Rep. Chan. Funds Com. App. 42 (J). As to the fees payable in the Accountant-General's office, see *ante*, No. 1554 (9). As to when the Accountant-General will act upon an office copy of a decree or order, see Dan. Pr. 1633, n. (*q*). In *Webster* v. *Brown* (1866, W. 25), the Accountant-General acted on an office copy of an order, bearing the following request, signed by the plaintiff's solicitors, in the margin: "The original of this order having been stolen from the Accountant-General's office, it is requested that this copy be acted upon.—G. & Co., 18 July, 1870." As to obtaining office copies of certificates of operations in the Accountant-General's department, see Dan. Pr. 1635; Rep. Chan. Funds Com. xviii. The charge is 4*d.* per folio: *ante*, No. 1554 (5).

(*b*) See Dan. Pr. 1137, 1629. For orders in like case, see *Howard* v. *Cosier*, V. C. W. at Chambers, 12 Dec. 1866, Reg. Lib. A. 2749; *Eborall* v. *Forrest*, V. C. S. at Chambers, 13 Dec. 1866, Reg. Lib. A. 2742; *Barrett* v. *Mortimer*, M. R. at Chambers, 22 Dec. 1866, Reg. Lib. A. 2768; and see Seton, 58, 59. For form of order for prospective payments, see Seton, 59, No. 3. For the

1890.

Affidavit of having cast up schedules to answer, and of the balance due thereon(*c*).

Formal parts : see ante, No. 9.

1. I have cast up the several items set forth in the first and second schedules [*or as may be*] to the answer of the defendant A. B. filed in this cause on the —— day of ——, 187—.

2. The items in the said first schedule [*or as may be*] amount to the sum of £1000, and no more ; and the items in the said second schedule [*or as may be*] amount to the sum of £600, and no more.

3. The said sum of £600 being deducted from the said sum of £1000, there remains a balance or sum of £400 : which sum of £400 appears by the said answer and schedules to be due from the said defendant A. B. to the estate of C. D., the testator in the plaintiff's bill named [*or as may be*].

1891.

Affidavit of having cast up an account, and of the balance due thereon (*d*).

Formal parts : see ante, No. 9.

1. I have cast up the several items set forth in the account marked A., left in the Chambers of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——] by the defendant A. B., and verified by his affidavit filed in this cause on the —— day of ——, 187—.

2. The items on the receipt side of the said account amount to the sum of £1000, and no more ; and the items on the payment side of the said account amount to the sum of £600, and no more.

3. The said sum of £600 being deducted from the said sum of £1000, there remains a balance or sum of £400 : which sum of £400 appears by the said affidavit and account to be due from the said defendant A. B. to the estate of C. D., the testator in the plaintiff's bill named [*or as may be*].

1892.

Affidavit of amount of cash to be paid into Court, pursuant to order (*e*).

Formal parts : see ante, No. 9.

1. The (*Describe the cash : according to the order directing the payment in ; as thus :*

mode of paying money, or transferring stock, or depositing securities into or in Court, see Dan. Pr. 1636—1639 ; Rep. Chan. Funds Com. xviii.—xix. For forms of direction to pay in, and of certificates of payment in, and transfer, see Rep. Chan. Funds Com. App. 40 (A. 1—2. B. 2). For order for deposit in Court of a box containing securities, with liberty for either party to have access thereto, for the purposes of the suit, see *O'Toole* v. *Brown*, M. R. at Chambers, 13 Dec. 1869, Reg. Lib. B. 3069. For form of order for the deposit of foreign securities, see Seton, 60, No. 7 ; and for order for transmission from India, and payment into Court here, of funds in Court in a cause in India, see *Mackintosh* v. *Stewart*, M. R., 12 Nov. 1863, Reg. Lib. B. 2469. As to the commission allowed on a transfer into Court, see Dan. Pr. 1637, n. (*p*).

(*c*) See Dan. Pr. 1630.

(*d*) *Ibid.*, 1631.

(*e*) *Ibid.*, 1636, n. (*i*).

interest accrued on the £——, bank 3*l.* per cent. annuities in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—, mentioned, previous to the transfer thereof thereby directed),

and which pursuant to the said order is to be paid into the bank to the credit of this cause [*or as may be*], amounts to the sum of £——, and no more.

1893.

Notice of motion, or summons, for investment of cash in Court (*f*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the £—— cash in the bank on the credit of (*Set out the title of the account: from the Accountant-General's voluntary certificate; as thus;* Jones *v.* Smith, 1865, J. 50, "The personal estate account"), may be laid out in bank 3*l.* per cent. annuities [*or as may be*]; and that the interest to accrue from time to time on such annuities may be laid out in like annuities, and accumulated.

1894.

Request to invest cash (*g*).

(*Title of the cause, or matter, or cause and account, in which the fund stands.*)

Sir:

I desire that the sum of £—— may be laid out in the purchase of bank 3*l.* per cent. annuities [*or as may be*]: to be transferred to your account (in trust) in this cause [*or as may be*].

Dated this —— day of ——, 187—.

A. B., of (*Place of business*),
Plaintiff's solicitor [*or as may be*].

To the Accountant-General of the
Court of Chancery.

(*f*) See Dan. Pr. 1640. The application is ordinarily made by summons. As to the securities on which cash under the control of the Court may be invested, see Dan. Pr. 1641—1642; 23 & 24 Vic. c. 38, s. 10; Ord. 1 Feb. 1861, r. 1. As to investments in the purchase, or on mortgage, of an estate, see *ante*, Nos. 1268—1280, and notes thereto. As to investments of funds paid in under the Legacy Duty Act, and Trustee Relief Acts, see Dan. Pr. 1640; Ord. I. 11; XLI. 3; and *post*, Chap. XLV. secs. 3, 11. As to Exchequer bills, see Dan. Pr. 1638—1639; Ord. 28 Aug. 1828; Cons. Ord. Prel. Ord. I. (3); Ord. I. 13. For forms of orders to deposit Exchequer bills, and for investment in Exchequer bills or bonds, see Seton, 59, Nos. 4—6.

(*g*) See Dan. Pr. 1643; Rep. Chan. Funds Com., App. 41 (D. 1). For forms of certificate of purchase, see *ib.* (D. 3). For the mode of making investments of cash in Court, see Dan. Pr. 1643—1644; Rep. Chan. Funds Com. xxi. The smallest sum usually invested by the Accountant-General is 3*l.* 10*s.*: *ib.* App. 35; Dan. Pr. 1640, n. (*g*); Seton, 64.

1895.

Process to enforce decree or order, directing a payment of money, transfer of stock, or delivery of effects, into Court (*h*).

See the following Forms, *ante:*

Memorandum to be indorsed on copy decree or order for service: Nos. 922—924.

Notice of motion, or summons, to enlarge the time limited by the decree or order to obey same: No. 925.

The like, to fix a time where none limited, or limited time expired: No. 926.

Motion paper, or summons, for substituted service of the decree or order: No. 927.

Affidavit in support: No. 928.

Affidavit of service of the decree or order, &c.: Nos. 929, 930.

Process against unprivileged persons:

By attachment: Nos. 931—942.

By sequestration: Nos. 943—959.

By *fieri facias:* Nos. 965—981.

By *elegit:* Nos. 982—992.

Process against a beneficed clerk: Nos. 993—1000.

Committal to Prison, under section 5 of the Debtors Act, 1869 (*i*): Nos. 1001—1005.

Process against Peers, and Members of Parliament: Nos. 1006—1013.

Process against a Corporation Aggregate: Nos. 1014—1020.

(*h*) See Dan. Pr. 1644—1645; and notes to the forms here referred to.

(*i*) 32 & 33 Vic. c. 62.

CHAPTER XLI.

PAYMENT OF MONEY, AND TRANSFER OF STOCK, OUT OF COURT (*b*).

1896.

Request to carry over fund (*a*).

Formal parts: see ante, No. 1894.

I desire that the sum of £—— may be carried over to the credit of this cause, "The Income account" [*or as may be*].

(*a*) See Dan. Pr. 1648. A written request is not necessary: although frequently given: *ib.* A fee of 2*s.* 6*d.* is allowed for drawing the request: *ante*, No. 1552 (2). For the cases in which funds are carried over to separate accounts, see Dan. Pr. 1646. For a collection of forms of headings of accounts, see 12 Beav. 210, n. For the mode of making a carrying over, see Dan. Pr. 1648. For forms of orders directing carryings over, see Seton, 70. For forms of direction to carry over, and certificate of the carrying over, see Rep. Chan. Funds Com., App. 41 (C. 1, 2). For order to carry over share of fund, and directing that, when carried over, it should continue subject to the restraints imposed by former orders, see *Peterson* v. *Peterson*, M. R. 18 Feb. 1867, Reg. Lib. B. 427. For the mode of obtaining payment or transfer out of Court of a fund carried to a separate account, see Dan. Pr. 1648, 1649.

(*b*) As to when payments and transfers of funds, and delivery of specific articles, out of Court will be ordered, and mode of application, see Dan. Pr. 1646—1672. For the practice as to drawing up money orders, and as to the papers to be left on bespeaking such orders, see Dan. Pr. 869, *et seq.*, 1657; Reg. Regul. 15 Mar. 1860, rr. 16, 17, 30, 34. For the mode of payment out of principal money, see Dan. Pr. 1661; Rep. Chan. Funds Com. xxiii. For form of the Accountant-General's cheque, see *ib.* App. 41 (F. 4); and as to countersignature by one of his clerks, see Dan. Pr. 1635, n. (*b*), 1661; 30 & 31 Vic. c. 87, s. 11. As to the course, where a cheque is lost, or out of time, see Dan. Pr. 1661. For the mode of payment of dividends on stock or securities in Court, see *ib.* 1662; Rep. Chan. Funds Com. xxiii. For the mode of making sales, and transfers of stock, out of Court, and delivering out Exchequer bills and bonds, and boxes of effects, see *ib.* xxi. xxii; Dan. Pr. 1666—1669; Seton, 78; Ord. I. 16; Reg. Regul. 15 Mar. 1860, r. 39. For forms of Registrars' certificates, see Seton, 79—82; and *post*, Nos. 1898, 1918; and for forms of notification and certificate of sale, and transfer ticket, notification, and certificate of transfer, see Rep. Chan. Funds Com. App. 41 (E. 1, 2. F. 1—3). As to the investigation of dormant accounts, see *ib.* xxxiii.; Dan. Pr. 1671; 16 & 17 Vic. c. 98, ss. 1—3; and Notice dated 19 Dec. 1865, in W. N. (1866), Pt. II. 264;

1897.

Affidavit of amount of residue of a fund: to be dealt with by the Registrar, or Accountant General (*c*).

Formal parts: see ante, No. 9.

1. The residue of the (*Describe what: according to the decree or order; as thus:*

sum of £——, bank 3*l.* per cent. annuities, in the decree [*Or*, order] dated the —— day of ——, 187—, mentioned, after the sale of so much thereof as, with the cash in the bank on the credit of this cause, was sufficient to raise the sum of £——)

amounts to the sum of £——, and no more.

1898.

Registrar's certificate for the sale or transfer of stock (*d*).

To the Accountant-General of the Court of Chancery.

(*Short title of cause, or matter.*)

Pursuant to an order dated the —— day of ——, 187—, (*Describe the amount to be sold or transferred, in words at length*), bank 3*l.* per cent. annuities [*or as may be*], standing in your name in trust in this cause, "The personal estate account" [*or as may be: as in the order*], are to be sold.

Or, are to be transferred to A. B., in the said order named.

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see also Dan. Pr. 1647, 1672. As to the payment out to a party whose title is subject to a contingency, and as to security to refund, see Dan. Pr. 1647; and see *ib.* 1671. As to prospective orders for the payment of interest on funds to be subsequently paid into Court, see Dan. Pr. 1650. As to payments to a sole trustee, see *ib.* 1653. As to payment of a fund to which an infant domiciled abroad is entitled, see *ib.* 1651. As to payments out, pending an abatement, or after dismissal of suit, see *ib.* 1651, 1652. As to payments to successive tenants for life, corporations, trustees, or a married woman as personal representative, see *ib.* 1652—1654; and for forms of orders, see Seton, 67, 68. As to the costs of an application by a tenant for life, see Dan. Pr. 1651. As to periodical payments, and evidence of fulfilment of conditions on which payable, see *ib.* 1663—1664. As to payments to partners, see *ib.* 1663; Ord. I. 40. As to payments and transfers to personal representatives or the survivors, see Dan. Pr. 1663; Ord. I. 4—6; and *post*, Nos. 1915—1918; and to a person entitled to administer: though no grant made, see Dan. Pr. 1656. As to payments to person authorised by power of attorney, see Dan. Pr. 1655; and *post*, No. 1927. As to payment, and evidence of payment, of legacy or succession duty, see 16 & 17 Vic. c. 51, ss. 51—53; Ord. XXIII. 9; Dan. Pr. 870, 1659, 1660; Trevor's Taxes on Succession, 243, 246; and for forms of orders providing for such payment, see Seton, 82; and see *post*, Nos. 1903, 1904. As to payment out of a fund arisen from land, without a disentailing assurance, or acknowledged deed, see Dan. Pr. 1656. As to the payment out of a fund to which a married woman is entitled, see *post*, Nos. 1903—1914.

(*c*) See Ord. XXIII. 4; Dan. Pr. 866, 1634.

(*d*) See Seton, 79, No. 1; 80, No. 4; and see *post*, No. 1918. For forms of direction:—for sale of so much of residue of stock as, with subsequent

1899.

Notice to creditors that checks may be received (*e*).

In Chancery.

(*Short title.*)

The checks for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this (matter and) cause, dated the —— day of ——, 187—, may be received at the Accountant-General's Office on and after the —— day of ——, 187—. Dated (*&c.: Conclude as in* No. 54, *ante*).

1900.

Consent of legatees, or creditors, to payment to a solicitor of small sums to which they are entitled (*f*).

In Chancery.

(*Short title, and reference to the record.*)

We, whose names and signatures respectively are set forth in the first and second columns hereunder written, hereby request that the several sums of money set opposite our respective names in the third column hereunder written, and which have been certified to be due to us by the Chief Clerk's certificate dated the ——, 187—, as legatees under the will [*Or,* creditors upon the estate] of the testator A. B. [*or as may be*], may be paid to Mr. E. F., of (*Place of business*), the plaintiff's solicitor [*or as may be*]: upon his undertaking to account for the same to us respectively.

Christian and surnames.	Signatures.	Amounts payable. £.	s.	d.	Signature and address of witness.
William Jones . .	Wm. Jones .	8	6	3	J. E. Falkner, of 211, Chancery Lane, solicitor.
Thomas Sharp and Arthur Clark (as partners) . .	Sharp & Clark	3	8	9	

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interest, will raise costs—for sale of stock to raise, with cash, a stated sum—for sale or transfer of stock transferred in or carried over—for transfer of residue of stock—for transfer of stock in several proportionate parts—for transfer of several sums of stock, parts of a larger sum—for transfer of stock to the National Debt Commissioners, or other Government body—for sale or delivery out of Exchequer bills—and for delivery out of specific effects: see Seton, 80—82.

(*e*) See Dan. Pr. 1661; Ord. 27 May, 1865, r. 12, and Sched. 2, No. 7; and *ante*, No. 1235, *et seq.* As to the mode of giving the notice, see Ord. 27 May, 1865, r. 13; Dan. Pr. 1095, n. (*m*), 1661, n. (*c*).

(*f*) As to payments of small sums to a solicitor, on his undertaking to distribute same, see Dan. Pr. 1654; Rep. Chan. Funds Com. xxv.

1901.
Petition for payment out of a share of a fund of stock and cash (*g*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition* (*h*)).

Showeth as follows :

1. *Show the applicant's title; as thus:* C. D., the testator in the pleadings of this cause named, by his will, dated the —— of ——, 187—, bequeathed to the defendants E. F., and G. H., the sum of £12,000, bank 3*l.* per cent. annuities, upon trust to pay the income thereof to his niece N. B., the wife of J. B., for her life, for her separate use ; and, after her decease, upon trust for such of her children by the said J. B., as should be living at the time of her decease, and live to attain the age of twenty-one years ; and if more than one, in equal shares.

2. By the decree made on the hearing of this cause, dated the —— of ——, 187—, the trusts of the said will were directed to be carried into execution ; and the usual accounts and inquiries were directed to be taken and made as to the estate of the said testator ; and an inquiry was thereby also directed as to the children of the said N. B.

3. By the certificate of R. M., esquire, the Chief Clerk of your lordship [*Or*, of the Vice-Chancellor Sir ——], dated the —— of ——, 187—, and filed on the —— of ——, 187—, he found, amongst other things, that the said N. B. had three children then living by her husband the said J. B. ; namely, your petitioner A. B. : who was born on the —— of——, 18— : W. B. : who was born on, *&c.* ; and T. B. : who was born on, *&c.*

4. By an order dated the —— of ——, 187—, made on the hearing of this cause on further consideration, the sum of £11,600, bank 3*l.* per cent. annuities : which then represented the said legacy of £12,000 like annuities, after raising and paying thereout the legacy duty payable in respect thereof : was directed to be carried over in this cause to "The account of N. B., the wife of J. B., and her children by him ;" and the interest to accrue thereon, during the life of the said N. B., was directed to be paid to her, on her separate receipt.

5. Pursuant to the said order, the said N. B. received the interest which accrued on the said fund, down to the —— of ——, 187—.

(*g*) See Dan. Pr. 1648 ; and *ante*, No. 1896, n. (*b*). For forms of orders for payment and transfer out, see Seton, 71, 72. As to the persons to be served with a petition or summons for payment or transfer out, and the evidence in support, see Dan. Pr. 1649, 1650. The petition or summons should always be entitled in the cause or matter to the credit of which the fund stands : *ib.* 1658. A fund may be ordered to be transferred from one cause to another, upon a petition or summons entitled only in the former cause : *ib.* As to the power of a Judge to make an order affecting a fund standing to the credit of a cause attached to another branch of the Court, see *Wright* v. *Irving*, 10 Sim. 625; *Weeding* v. *Weeding*, 1 J. & H. 424.

(*h*) As to the description of the applicant, see *ante*, No. 55, n. (*t*).

6. The said N. B. died on the —— of ——, 187—: leaving your petitioner A. B., and the said W. B., and T. B., her only children her surviving. Your petitioner attained his age of twenty-one years on the —— of ——, 187—. The said W. B. and T. B. are still infants.

7. There is now standing on the credit of this cause, "The account of N. B., the wife of J. B., and her children by him," the said sum of £11,600, bank 3*l.* per cent. annuities, and £171 cash. The said cash represents the half-year's interest which became due on the said annuities on the —— of ——, 187—: whereof the sum of £71 is the proportion of such interest which accrued between the said —— of ——, 187—, the last period of payment to the said N. B., and the day of her death (*i*); and which proportion is payable to the said J. B., as the legal personal representative of the said N. B., by virtue of letters of administration of her effects granted to him by the Principal Registry of Her Majesty's Court of Probate, on the —— day of ——, 187— [*Or*, to the legal personal representative of the said N. B. when constituted].

8. Under the circumstances aforesaid your petitioner claims to be entitled to one-third part of the said £11,600, bank 3*l.* per cent. annuities, and of the sum of £100, residue of the said £171 cash.

Your petitioner therefore humbly prays:

1. That his costs of this application, as between solicitor and client, may be taxed, and paid out of the sum of £33 6*s.* 8*d.*, one third part of the said £100 cash;

2. That the residue of the said £33 6*s.* 8*d.*, and also the sum of £3,866 13*s.* 4*d.*, one third part of the said £11,600 bank 3*l.* per cent. annuities, and one third part of any interest to accrue on the said annuities, may be paid and transferred to your petitioner.

3. And that £71, further part of the said £171, cash may be paid to the said J. B., as the legal personal representative [*Or*, to the legal personal representative when constituted] of the said N. B. (*i*).

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

1902.

Summons, for payment off of an incumbrance out of a fund in Court (*k*).

Formal parts: see ante, No. 60.

on the part of C. D., of (*residence and addition*), that the sum of £——, principal money due to him on the security of a mortgage dated the ——of ——, 187—, from A. B., together with interest

(*i*) See Dan. Pr. 1658; Ord. XXIII. 8. As to the Apportionment Acts, see Dan. Pr. 1125, n. (*b*); and *ante*, No. 1291, n. (*k*).

(*k*) See Dan. Pr. 1648; and *ante*, No. 1896, n. (*b*).

thereon at the rate of £—— per cent. per annum from the —— of——, 187—, and the costs of the said C. D. of this application, may be raised and paid to the said C. D. out of the £——, bank 3*l.* per cent. annuities, and £——, cash, remaining on the credit of this cause, "The account of A. B., and his incumbrancer" [*or as may be*].

1903.

Petition of husband and wife, for payment to him of fund standing to her separate account (*l*).

Title—and address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*), and C., his wife.

Showeth as follows:

1. *Show how the account has been raised; as thus:* Pursuant to an order dated the —— day of ——, 187—, the sums of £——, bank 3*l.* per cent. annuities, and £——, cash, were carried over in this cause [*Or*, matter] to "The account of C. D., an infant, subject to duty;" and such cash was afterwards invested in the purchase of £—— like annuities; and the interest which has since accrued on the said sums of annuities has been from time to time laid out in like annuities, and accumulated.

2. *Show the present state of the fund; as thus:* The said bank annuities, cash, and interest are now represented by the sums of £——, bank 3*l.* per cent. annuities, and £——, cash, remaining on the credit of this cause [*Or*, matter], the said account [*or as may be*].

3. *Show the identity, marriage, and majority of the wife; as thus:* Your petitioner C. B. is the same person as C. D., in the said order named. On the —— of ——, 187—, your petitioner C.B. attained her age of twenty-one years; and on the —— of ——, 187—, your petitioners intermarried.

4. *State whether there is or not a settlement; as thus:* No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since, the marriage aforesaid of your petitioners.

Or, if there is a settlement or agreement, add, if so: other than a certain settlement [*Or*, agreement] dated the —— of ——, 187—; but which does not affect the said bank annuities and cash, or any portion thereof.

Your petitioners therefore humbly pray, as follows:

1. That the said £——, bank 3*l.* per cent. annuities, may be sold.
2. That their costs of this application may be taxed, as between solicitor and client.
3. That out of the proceeds of such sale, and the said

(*l*) See Dan. Pr. 88, 93; and *ante*, No. 1896, n. (*b*). For orders in like case, see Seton, 657, Nos. 1, 2. As to the payment out of Court to a husband of a fund to which his wife is entitled, her equity to a settlement thereout, and the mode in which such equity may be waived or affected, see Dan. Pr. 86, *et seq.* As to applications under the Married Women's Property Act, see *post*, No. 1914; and Chap. XLV. sec. 34.

£—— cash, and any interest to accrue on the said annuities, the said costs may be paid to your petitioner's solicitor; and the sum of £——: being the assessed amount of legacy [*Or*, succession] duty payable in respect of the said fund: may, upon the requisition of the Commissioners of Inland Revenue, be transferred to the account of the public monies of the Receiver-General of Inland Revenue at the Bank of England (*m*).

4. That the residue of the said proceeds, cash, and interest may be paid to your petitioner A. B., in right of your petitioner C. his wife.

Or that your lordship (*Conclude as in* No. 57, *ante*; *and add foot note*, No. 58).

1904.

Summons by husband and wife, for payment to him of fund standing to her separate account (*n*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), and C. his wife, late, and in the order dated the —— of——, 187—, described as, C. D., an infant:

1. That the £——, bank 3*l.* per cent. annuities, remaining on the credit of this cause [*Or*, matter], "The account of C. D., an infant, subject to duty" [*or as may be*], may be sold.

2. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers.

3. That out of the proceeds of such sale, and the £——, cash remaining on the like credit, and any interest to accrue (*&c.: as in clause* 3 *of prayer*, No. 1903, *ante*).

4. That the residue of such proceeds, cash, and interest may be paid to the applicant A. B., in right of the applicant C. his wife.

1905.

Affidavit, in support of petition or summons, for payment to husband of fund standing to wife's separate account (*o*).

In Chancery.

(*Title, and reference to the record.*)

We, E. F., of (*Place of business*), gentleman, and A. B., of (*residence and addition: as in petition or summons*), and C. his wife, severally make oath and say, as follows:

And first, I the said E. F., for myself say:

1. I am the solicitor for the said deponents A. B. and C. his wife, in the matter of the application made by them by petition presented [*Or*, by summons taken out] on the —— of ——, 187—, in this cause [*Or*, matter]; and I am well acquainted with the said A. B. and C. his wife [*or as may be*].

2. The said C. B. is the same person as "C. D., an infant" in the order in this cause [*Or*, matter] dated the —— of ——, 187—, named; and she is also the same person as "C., daughter

(*m*) See Dan. Pr. 1659; Ord. 10 Jan. 1870, r. 1 (Law. Rep. 5 Ch. xliv.); *Re Butlin*, V. C. S. 3 Dec. 1870, Reg. Lib. A. 2930.

(*n*) See Dan. Pr. 88, 93. For order in like case, see Seton, 958, No. 3.

(*o*) See Dan. Pr. 90, 93. As to proof of the marriage, see *ib.* 93.

of H. and L. D.," named in the paper writing now produced and shown to me, and marked A. (*p*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of M., for the year 18— [*or as may be: see ante*, No. 1493, *Par.* 3].

And we the said A. B. and C. his wife, for ourselves say, as follows:

3. On the —— of ——, 187—, we intermarried at the parish church of W., in the county of Y.; and we are the same persons as A. B. and C. D., respectively named in the paper writing now produced and shown to us, and marked B (*p*), and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of W., for the year 187— [*or as may be*].

4. No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since our said marriage.

If so: other than and except the settlement [*Or*, agreement for a settlement] now produced and shown to us, and marked D. (*p*), and dated the —— of ——, 187— (*q*).

If there is a settlement, or agreement for a settlement, add, where the application is made by summons (*r*)*:*

And I the said E. F., for myself further say:

5. I have carefully perused the said settlement [*Or*, agreement for a settlement] dated the —— of ——, 187—, and which is also now produced and shown to me, and marked D. (*p*); and, according to the best of my judgment, the (*Describe the funds proposed to be dealt with: as in the Accountant-General's voluntary certificate*), are not, nor is, nor are, any part or parts thereof, subject to the trusts of the said settlement [*Or*, agreement for a settlement], or in any manner comprised therein, or affected thereby.

1906.

Summons to appoint commissioners to take a married woman's examination as to the disposition of a fund in Court (*t*).

Formal parts: see ante, No. 60.

on the part of A. B., of (*residence and addition*), and C. his wife, late, and in the order dated the —— day of ——, 187—, called C. D. an infant [*or as may be*]: that the said C. B. may attend

(*p*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*q*) As to an affidavit of no settlement, see Dan. Pr. 90; and as to dispensing with it, see *ib.* 90, n. (*g*), 91.

(*r*) See Dan. Pr. 90.

(*t*) See Dan. Pr. 88, 93. For orders in like case, see *Re Fletcher*, V. C. W. at Chambers, 13 Dec. 1866, Reg. Lib. A. 2682; *Ring* v. *Miles*, M. R. at Chambers, 18 July 1870, Reg. Lib. B. 1920; and see Seton, 658, No. 4. For the practice as to the appointment of, and examination by commissioners, see Dan. Pr. 87—90. The examination of the wife cannot be taken where she is not of full age: *ib.* 91. As to when her examination will be dispensed with, see *ib.* 92, 94. For order for payment of fund to husband, on separate examination of the wife by the Judge in person, see *Potter* v. *Roker*, V. C. J. at Chambers, 1 July, 1870,

E. F., G. H., I. K., and L. M., all of the city of York [*or as may be*], solicitors of this Court, or any two of them, and be examined, apart from her said husband, touching the manner in which she is willing and desirous that the (*Describe the funds to be dealt with: as in the Accountant-General's voluntary certificate*), shall be transferred, paid, applied, or disposed of:—with the usual directions (*u*).

A.

1907. Examination of a married woman, by commissioners (*v*).

In Chancery.

(*Title, as in order directing the examination.*)

The examination of C. B., the wife of A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—(*Order directing the examination*), respectively named: taken pursuant to the said order.

I, the said C. B., the wife of the said A. B., having been this day examined, secretly and apart from my said husband (*x*), by E. F. and G. H., in the said order respectively named, to whom and in what manner, and for what purpose, I am willing and desirous that the (*Describe the funds: as in the order directing the examination*), in the said order mentioned, shall be transferred, paid, applied or disposed of (*y*), for answer thereto say: that I am willing and desirous that the said sums of (*State what*) shall be (*State the result of the examination; as thus:* transferred and paid to my husband the said A. B.

Or, settled for the benefit of myself, and my children, in such manner as the High Court of Chancery, or any Judge thereof, may please to direct).

If to be transferred and paid to husband, add: And I hereby freely and voluntarily consent to the said sums being transferred and

Reg. Lib. B. 1793; and see Seton, 658, No. 3. For forms of orders to examine a wife as to: (1) a fund not in Court; (2) a post-nuptial settlement; (3) money arisen from entailed land, after a disentailing deed; (4) and re-investment of a fund in land, or to take the fund in money: see Seton, 659—661; and see Dan. Pr. 94. For forms of examination of a wife as to the execution by her of a deed, and certificate of the commissioners, see Braithwaite's Pr. 544—546. For precedents of disentailing deeds, see Shelford's R. P. Stat. App.; 2 Prideaux's Conv. 484, *et seq.*; 3 Davidson's Conv. 1166, *et seq.*

(*u*) As to these directions, see Seton, 658, No. 4; Dan. Pr. 90.

(*v*) See Dan. Pr. 89. The examination should be written on the first side of a sheet of foolscap; and the commissioner's certificate (*post*, No. 1903) should follow thereunder. As to revocation of consent by the wife, see Dan. Pr. 92. As to paying the fund to the wife, on her separate receipt, without examination, see *ib.*

(*x*) The husband, or his solicitor, or any person connected with them, should not be present at this examination: Dan. Pr. 89, n. (*y*).

(*y*) The language of the order directing the examination should be here adopted.

paid to my said husband, accordingly. As witness my hand, this —— day of ——, 187—.

C. B.

Witness to the signature of the said C. B., }
X. Y., of (*residence and addition*).

1908.

Certificate of examination (*z*).

B.

To the Right Honourable the Lord High Chancellor of Great Britain [*Or*, Master of the Rolls (*a*)].

We, the undersigned E. F., and G. H.: being two of the commissioners named in the order dated the —— day of ——, 187—, above mentioned: humbly certify to your lordship, that, pursuant to the said order, we have this day examined the above named C. B., the wife of the above named A. B., secretly and apart from her said husband, to whom, in what manner, and for what purpose, she is willing and desirous that the sums of (*Describe them*), in the said order mentioned, shall be transferred, paid, applied or disposed of (*b*). And we have taken such examination in writing, as above set forth.

We further certify that, at the time of such examination, we read over the said order to the said C. B., and explained to her the purport and effect thereof; and we were satisfied that she was then aware of the nature and object of the said examination.

If the funds are to be transferred and paid to the husband, add: and that she freely and voluntarily consented to the sums above mentioned being transferred and paid to her said husband, A. B.

E. F.
G. H.

Witness to the signatures of the said E. F., and G. H., }
X. Y.

1909.

Affidavit verifying the signatures to the examination and certificate (*c*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I saw C. B., the wife of A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—(*Order directing the examination*), respectively

(*z*) See Dan. Pr. 89; and notes to No. 1907, *ante*.

(*a*) In a cause or matter attached to the Rolls' Court, the certificate should be addressed to the Master of the Rolls: in other cases, to the Lord Chancellor. It may, however, be addressed to the Lord Chancellor in any case.

(*b*) The language of the order directing the examination should be here adopted.

(*c*) See Dan. Pr. 89. This affidavit should be written on the third or fourth side of the sheet of paper containing the examination and certificate; but it may be written on a separate sheet of foolscap.

named, sign the paper writing, marked A. (*d*), hereunto annexed, and purporting to be her examination taken pursuant to the said order.

2. On the said —— day of ——, I also saw E. F., and G. H., two of the commissioners named in the said order, respectively sign the paper writing, marked B. (*e*), hereto annexed, and purporting to be their certificate of the said examination.

3. The signature "——," set and subscribed to the said examination, is of the proper handwriting of the said C. B.

4. The signatures "——," and "——," respectively set and subscribed to the said certificate, are of the respective proper handswriting of the said E. F. and G. H.

5. The signature "——," set and subscribed to the attestation at the foot of the said examination and certificate respectively, is of my proper handwriting.

1910.

Memorandum of identity of examination and certificate (*f*).

In Chancery.

(*Short title, and reference to the record.*)

These are the paper writings, marked respectively A. and B., referred to in the affidavit of X. Y., sworn in this cause [*Or*, matter] before me, this —— day of ——, 187—.

W. D., a commissioner, &c.

1911.

Summons, for a settlement, by order, of a fund in Court on wife and children (*g*).

Formal parts: see ante, No. 60.

on the part of C. B., the wife of A. B., of (*residence and addition*), by E. F., of (*residence and addition*), her next friend for this purpose:

1. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers; and may be paid out of the (*Describe the fund, according to the Accountant-General's voluntary certificate; as thus:* £——, cash in the bank on the credit of this cause [*Or*, matter], the account of C. B., the wife of A. B.).

2. That the residue of the said fund may be carried over to the credit of "The account of the settlement of C., the wife of A. B., and her children," and be laid out in bank 3*l.* per cent. annuities.

(*d*) See *ante*, No. 1907.

(*e*) *Ibid.*, 1908.

(*f*) See Dan. Pr. 89. The memorandum should be written on the margin of the first page of the examination and certificate.

(*g*) See Dan. Pr. 95. As to the nature and form of the settlement which the Court will direct to be made out of a wife's property, see Dan. Pr. 96—102; and as to effecting such settlement by order, without deed, see *ib.* 95. For forms of orders for a settlement, see Seton, 664—666; and see 3 Davidson's Conv. 141, n. For form of order approving marriage of ward of Court, and settling fund, without deed, see *ante*, No. 1500.

3. That the said annuities may be held upon the following trusts, namely (*State the trusts; as thus* (*h*)) :

Upon trust for the said C. B., for her life, and, during any coverture, for her separate use: without power of anticipation ;

And after her decease, upon trust for such of the children of the said C. B., as being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age, or marry under that age ; and, if more than one, in equal shares.

And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain the said age, or be married, then from and after the decease of the said C. B., in trust for the said A. B., his executors, administrators and assigns.

4. That the interest from time to time to accrue, during the life of the said C. B., on the said annuities may be paid to the said C. B., on her separate receipt, until further order.

1912.

Affidavit by husband and wife, for payment or transfer to them of a fund, not exceeding £200, directed before their marriage to be paid or transferred to her: where there is no settlement or agreement whatever (*i*).

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, A. B., of (*residence and addition*), and C. his wife, severally make oath and say, as follows :

1. This deponent C. B. is the same person as C. D., in the decree [*Or*, order] made in this cause [*Or*, matter] dated the —— day of ——, 187—, named, and to whom the sums of (*State what: as in the decree or order*) are thereby directed to be paid (transferred and delivered).

2. *Prove the marriage: see ante*, No. 1905, *par.* 3.

3. No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since our said marriage.

4. The said sums of (*State what*) have not respectively yet been paid (transferred and delivered), pursuant to the said decree [*Or*, order].

5. Under the circumstances aforesaid we are desirous to have the said sums of (*State what*) paid (transferred and delivered) to us, pursuant to the said decree [*Or*, order], and the Consolidated General Order of this honourable Court in this behalf.

Sworn (*&c.: see ante*, No. 13).

1913.

The like, where there is a settlement or agreement, but not affecting the fund (*i*)

In Chancery.

(*Title of the cause or matter, and reference to the record.*)

We, A. B., of (*residence and addition*), and C. his wife, and E. F.,

(*h*) See Dan. Pr. 101.

(*i*) On an affidavit to the effect of Form 1912, or 1913, the Accountant-General may, without further order, pay, transfer, or deliver out, to husband and wife, any money, stocks, funds, shares or securities, not exceeding in the aggregate 200*l.*, which before the marriage were ordered to be paid, transferred, or delivered out to the wife: see Ord. I. 1—3; Dan. Pr. 92.

of (*Place of business*), gentleman, the solicitor of the said A. B. and C. his wife, severally make oath and say, as follows:

And first, we the said A. B. and C. his wife, for ourselves say:

1. This deponent (*Proceed as in* No. 1912, *ante, to the end of par.* 3; *and continue as follows*): other than and except the settlement [*Or*, agreement for a settlement] now produced and shown to us, and marked D. (*k*), and dated the —— day of ——, 187—.

4. The said sums (*Continue as in par.* 4, *of* No. 1912, *ante, to the end of par.* 5).

And I the said E. F., for myself say:

5. I have carefully perused the said settlement [*Or*, agreement for a settlement] dated the —— day of ——, 187—, and which is also now produced and shown to me, and marked D. (*k*); and, according to the best of my judgment, the sums of (*Describe the monies, stocks, funds, shares or securities sought to be paid, transferred, or delivered out; and the cause, or matter, and account in which they stand*), are not, nor is, nor are any part or parts thereof, subject to the trusts of the said settlement [*Or*, agreement for a settlement], or in any manner comprised therein, or affected thereby.

Sworn (*&c.: see ante*, No. 13).

1914.

Summons, by a married woman, for the transfer of a fund into her name, under the Married Women's Property Act, 1870 (*l*), s. 3.

Formal parts: see ante, No. 60.

on the part of A. B., the wife of C. B., of (*residence and addition*), by D. E., of (*residence and addition*), her next friend, that the £—— (*Describe the fund according to the Accountant General's voluntary certificate; as thus:* £500, bank 3*l.* per cent. annuities, remaining on the credit of this cause [*Or*, matter], the account of A. B. the wife of C. B.), may be transferred into the name of the said A. B., the wife of C. B., as a married woman entitled to her separate

(*k*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*l*) 33 & 34 Vic. c. 93; see Dan. Pr. 1653, 1654. For order for a like transfer and payment on summons, without examination, or waiver of a settlement, see *Brown* v. *Gellatly*, M. R. at Chambers, 25 Jan. 1871, Reg. Lib. A. 169; and for orders in like case, on petition of a married woman (without a next friend), a widow, and the husband, on the examination and consent of the ladies in Court, see *Re Bartholomew*, 18 Nov. 1870, Reg. Lib. A. 2929: W. N. (1870), 234: 19 W. R. 95, V. C. M.; and on petition of infants and a married woman, by their next friend, and the consent of the married woman in Court, see *Re Butlin*, 3 Dec. 1870, Reg. Lib. A. 2930: W. N. (1870), 251: 19 W. R. 241, V. C. S.; and see Dan. Pr. 1653, 1654. For clauses as to the costs and legacy duty, see *ante*, Nos. 1903, 1904. The form to be provided by the bank, under sec. 3, should be signed by the married woman, and lodged at the bank, previously to the transfer being made by the Accountant-General: Dan. Pr. 1654, n. (*k*). See further as to the Married Women's Property Act, *ib.* 1653, 1654; *ib.* Chap. XLV. sec. 34; and *post*, XLV. sec. 34.

use; and that the £—— cash, remaining on the like credit, and any interest to accrue on the said bank annuities previous to such transfer, may be paid to the said A. B., on her separate receipt.

1915.

Affidavit for payment, &c., to the survivors of personal representatives, under an order not naming them (*m*).

Formal parts: see ante, No. 9 (*n*).

1. I was well acquainted with A. B., deceased, and he was the person to whom the probate of the will [*Or*, letters of administration of the effects] of C. D., deceased, the person named in the order dated the —— day of ——, was [*Or*, were] granted by Her Majesty's Court of Probate [*or as the case may be*], on the —— day of —— (*o*), jointly with E. F. and G. H.: which probate [*Or*, letters of administration], marked H (*p*) is [*Or*, are] now produced and shown to me.

2. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

1916.

The like, under an order naming them (*q*).

Formal parts: see ante, No. 9 (*n*).

1. I was well acquainted with A. B., deceased, the person named in the order, dated the —— day of ——, 187—, as one of the legal personal representatives of C. D., deceased.

2. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

(*m*) See Dan. Pr. 1663, 1664, 1668, 1669; Ord. I. 5, 7; Reg. Regul. 15 Mar. 1860, r. 40 (Case I). This affidavit is required, on an application to the Accountant-General for his check for payment of cash—or to the Registrar for his direction for the transfer or delivery of stocks, funds or securities—to the survivors of personal representatives, without further order, under an order which has not described them by name. The probate or letters of administration of the testator or intestate, and a certificate of the burial of the deceased representative, or an official extract from the register of deaths of his death, exhibited to the affidavit, must be produced to the Registrar: *ib.*

(*n*) The affidavit must not be made by or before one of the executors or administrators: Reg. Regul. 15 Mar. 1860, r. 40, n.

(*o*) The probate or letters of administration will not be acted on, if granted more than six years after the date of the decree or order: Ord. I. 8; Dan. Pr. 1664.

(*p*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*q*) See Dan. Pr. 1664, 1668, 1669; Ord. I. 5, 7; Reg. Regul. 15 Mar. 1860, r. 40 (Case II). An affidavit to this effect is required on an application to the Accountant-General for his check for payment of cash—or to the Registrar for his direction for the transfer or delivery of stocks, funds, or securities—to the survivors of personal representatives, without further order, under an order which has described them by name. A certificate of the

1917.
Affidavit, for payment, &c., to (surviving) personal representatives, under an order for payment to a person, or his representatives (*r*).

Formal parts: see ante, No. 9 (*s*).

1. I was well acquainted with A. B., deceased, the person named in the order dated, *&c.*, and late of, *&c.* (*Follow description in probate or administration*).

2. Probate of the will [*Or*, Letters of administration of the effects] of the said A. B., was [*Or*, were] granted by Her Majesty's Court of Probate [*or as the case may be*], on the —— day of —— (*t*), to C. D. and E. F.: which probate [*Or*, letters of administration], marked X. (*u*), is [*Or*, are] now produced and shown to me.

3. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

1918.
Registrar's certificate for the transfer of stock to the personal representatives of a person named in an order (*v*).

Formal parts: see ante, No. 1898.

Pursuant to an order dated the —— day of ——, 187—, the 1st of the Consolidated Orders, rule 8, an affidavit of X. Y., filed the —— day of ——, 187—, the certificate of the burial of A. B., in the said order named, and the probate of the will [*Or*, letters of administration of the effects] of the said A. B., granted on the ——day of ——, 187—, to E. F. and G. H., by the Court of Probate [*or as may be*], £——, bank 3*l.* per cent. annuities [*or as may be*], standing, *&c.*, are to be transferred to the said E. F. and G. H.

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burial of the deceased representative, or an official extract from the register of deaths of his death, exhibited to the affidavit, must be produced to the Registrar: *ib.*

(*r*) See Dan. Pr. 1664, 1669; Ord. I. 6, 7; Reg. Regul. 15 Mar. 1860. r. 40 (Case III). An affidavit to this effect is required on an application to the Accountant-General for his check for payment of cash—or to the Registrar for his direction for the transfer or delivery of stocks, funds, or securities—to personal representatives, or surviving personal representatives, without further order, under an order directing such payment, transfer, or delivery to a person therein named, or his legal personal representatives. The probate or letters of administration of the testator or intestate, and a certificate of his burial, or an official extract from the register of deaths of his death, must be produced. If any of his personal representatives be dead, leaving survivors, or a survivor, Forms 1915 and 1916 should be combined and adapted, and the further evidence mentioned in notes (*m*) and (*q*) thereto must be produced: see *ib.*; Ord. I. 7.

(*s*) See *ante*, No. 1915, n. (*n*).

(*t*) *Ibid.*, n. (*o*).

(*u*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*v*) Dan. Pr. 1668, 1669; Reg. Regul. 15 Mar. 1860, r. 40.

1919.

Summons, that money ordered to be paid to A. may be paid to B., instead.

Formal parts: see ante, No. 60.

on the part of C. B., of (*residence and addition*), that the money [*Or*, cash—*Or*, interest—*as the case may be*] under the order dated the —— day of ——, 187—, payable to D. A., may, instead thereof, be paid to the applicant C. B.

1920.

Summons that costs payable to one solicitor may be paid to another, instead (*v*).

Formal parts: see ante, No. 60.

on the part of C. E. W., of, *&c.*, that the costs which by the order dated the —— of ——, 187—, were directed to be paid to S. D., as solicitor for A. B., *&c.*, may, instead thereof, be paid to the applicant C. E. W.

1921.

Request for Accountant General's power of attorney (*x*).

(*Short title of the cause or matter, or cause and account: as the case may be: in which the fund stands.*)

A power of attorney from

(*Insert name, address, and description of grantor*), the person named in an order [*Or*, in the Chief Clerk's certificate] in this cause [*Or*, matter] dated the ——, 187—,

to

(*Insert name, address, and description of grantee; and if more than one, add:* jointly and severally),

(who is [*Or*, are] well known to me), to receive your note or draft on the Bank of England for the sum of £——.

(*Or, if applicable to receipt of dividends, give description and amount of stock on which they are to be received*).

Dated this —— day of ——, 187—.

A. B.

[*Or*, For self and partner, C. D.:
A. B. (*y*).]

(*v*) *Cresswell* v. *Bateman*, V. C. K. at Chambers, 11 Feb. 1864, Reg. Lib. A. 190 (by consent).

(*x*) See Dan. Pr. 1665; Rep. Chan. Funds Com., App. 42 (H. 1). As to the authority to extend powers of attorney to prospective sums, see 16 & 17 Vic. c. 98, s. 7; Dan. Pr. 1665; Rep. Chan. Funds Com. xxv.

(*y*) The request must be signed by the solicitor himself who bespeaks it; or, if bespoken by a firm, by one of the firm with his own name, on behalf of the firm.

1922.

Form of an inland power (*z*).

Know all men by these presents that I, (*Insert name, address, and description of grantor*), have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint (*Insert name, address, and description of grantee*), my true and lawful attorney, for me and in my name, or in his own name, but for my use, to ask, demand, and receive of and from the Accountant-General of the Court of Chancery, the check, note or draft to be by him drawn on the Governor and Company of the Bank of England for the sum of (*State the particulars: see ante*, No. 1921). And I do hereby authorise and empower my said attorney to write and endorse his name on the back of such note or draft, and to receive the money drawn for thereby from the Bank of England; and, on receipt of such note or draft and sum of money, to give proper acquittances and discharges for the same to the said Accountant-General, and the Bank of England: hereby ratifying and confirming whatsoever my said attorney shall do in the premises by virtue of these presents. In witness whereof I have hereto set my hand and seal this —— day of ——, in the year of our Lord one thousand eight hundred and seventy —.

(*Signature and seal.*)

Sealed and delivered (being first duly stamped) in the presence of,

E. F., of (*residence, and business or occupation in life*), a housekeeper.

G. H., of, *&c.*

This paper writing was produced and shown to E. F., and is the same mentioned and referred to in his affidavit sworn this —— day of ——, 187—, before me,

J. K., a commissioner, &c.

(*z*) Rep. Chan. Funds Com. App. 42 (H. 2); and see Dan. Pr. 1665—1666. The following instructions are appended to the form of an inland power, when issued from the Accountant-General's office:—In this power of attorney, the date (in words) must be inserted prior to its execution; each of the witnesses attesting the same must write their residence and business or occupation in life; one of them must be a housekeeper, and be so described; and one of them must make an affidavit of its due execution before a master in chancery or commissioner for taking affidavits in chancery in England: unless the same be executed in those parts of Scotland or Ireland where no such officers are appointed: when it may be made before the chief magistrate of the place, or other person lawfully authorised to administer oaths. The form of a power to be executed abroad has special instructions appended to it as to the mode of execution, when issued from the Accountant-General's office: see Dan. Pr. 1666, n. (*b*). A fee of 3*s.* is payable, in a fee fund stamp, at the Accountant-General's office for preparing each power, exclusive of stamp duty: see *ante*, No. 1554 (9). Sixpence is charged by the stationer for each form of an inland power, including the affidavit of execution; and twopence for each form of power to be executed abroad. The stamp duty is as follows: (1) On a power

1923.

Affidavit of execution of an inland power (*a*).

In Chancery.

(*Short title.*)

I, G. H., of (*residence, and business or occupation in life*), make oath, that I was present and did see A. B., of (*Describe the grantor, as in the power*), duly sign, seal, and as his act and deed deliver the letter of attorney hereto annexed; and that the name "——" (*a*), thereto set, as the party executing the same, is of the proper handwriting of the said A. B.; and that the names "——," and "——" (*a*), set or subscribed as witnesses to the due execution of the said letter of attorney, are of the proper handwriting of the said E. F., and of me the said deponent; and that the said E. F. is a housekeeper, and residing at ——, in the county of ——.

Sworn (*&c.: see ante*, No. 12).

1924.

Request, by grantor of Accountant General's power, for payment of interest to his attorney; and certificate of grantor being alive (*b*).

To the Accountant-General of the Court of Chancery.

Be pleased to pay to Mr. C. D., by virtue of my letter of attorney granted to him, the interest due to me on the —— day of ——, 187—, in the cause Jones against Brown "The account of A. B. and his children" [*or as may be*].

A. B.

We, the Minister and one of the Churchwardens of the parish [*Or*, chapelry—*as the case may require*] of ——, in the county of ——, do hereby certify, that the above named A. B. was living on the —— day of ——, 187—.

N. M., Minister.
P. R., Churchwarden.

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to receive principal money, 10*s.* if the amount exceeds 20*l.*, and 5*s.* if it does not; (2) On a power to receive a single payment of interest, 1*s.*; (3) On a power to receive more than one such payment, or for periodical payments, 5*s.*, where the yearly dividend exceeds 3*l.*; but no duty is payable where the yearly dividend is under 3*l.*: see The Stamp Act, 1870 (33 & 34 Vic. c. 97), Sched.; Dan. Pr. 1665, n. (*y*). Where the power is to be executed abroad, the stamp duty is not impressed till the return of the power: Dan. Pr. 1665, n. (*y*).

(*a*) Rep. Chan. Funds Com. App. 42 (H. 2); and see Dan. Pr. 1663. The following instructions are appended to the form of affidavit, when issued from the Accountant-General's office:—In this affidavit, the signatures of the person or persons executing the annexed power of attorney and of the witnesses attesting its execution: whether such be the name written at length or abbreviated, or merely a mark: must be quoted exactly as written; and if by a mark, then this affidavit must state that the said power was previously read over to, and understood by the grantor.

(*b*) Rep. Chan. Funds Com. App. 42 (G); and see *ib.* xxiv.; and Dan. Pr. 1663.

1925.
The like, where the grantor is abroad (*c*).

To the Accountant-General of the
Court of Chancery.

Be pleased to pay to Mr. C. D., by virtue of my letter of attorney granted to him, the half-yearly payment due to me on the —— day of ——, 187—, out of the cash in the cause Jones against Brown "The account of A. B. and his children" [*or as may be*].

A. B.

I, (*Insert name of Notary, Consul-General, Ambassador, or Secretary of Embassy: as may be most convenient to the party abroad*), certify, that the above written A. B. came before me on the —— day of ——, 187—, and signed the above order in my presence: of which act, evidence being required, I hereby certify the same under my hand, and seal of office.

Done at ——, the —— day of ——, 187—.

(*Signature and seal.*)

1926.
Affidavit, for the Accountant General, of a person being alive (*d*).

Formal parts: see ante, No. 9.

1. A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187— (*Order under which periodical payment is made*), named [*Or*, The above named A. B. (*e*)], was alive on the —— day of ——, 187—: as I know from (*State means of knowledge; as thus:* having seen him on the last mentioned day, at (*State where*)).

2. To the best of my knowledge, information, and belief, the said A. B. is also now alive.

1927.
Summons, for payment out to a person authorised by power of attorney in other cases (*f*).

Formal parts: see ante, No. 60.

on the part of J. T. G., of (*residence and addition*), that £68 13*s.* 2*d.*, being one-third part of the £205 19*s.* 6*d.* bank 3*l.* per cent. annuities standing in the name of the Accountant-

(*c*) Rep. Chan. Funds Com. App. 42 (G.); and see *ib.* xxiv.; and Dan. Pr. 1663.

(*d*) See Dan. Pr. 1663. The Accountant-General will, in this case, act upon and retain the original affidavit. It need not, therefore, be filed: unless required to be used for other purposes.

(*e*) Where the affidavit is required to prove that the grantor of a power to receive a periodical payment is alive, the affidavit should be written at the foot of his request for payment.

(*f*) *Re Glover*, M. R. at Chambers, 18 Dec. 1866, Reg. Lib. A. 2797. As to payment out to a person authorised by power of attorney, or acting under a general authority, see Dan. Pr. 1655. As to making the principal a co-applicant, see *ib.* As to verification of the power when executed abroad, see *Re Goss, Liddall* v. *Nicholson*, W. N. (1866), 256: 12 Jur. N. S. 595, V. C. W.

General in trust in this matter, *&c.*, may be sold; and that out of the money to arise by such sale, the ascertained costs of the applicant may be paid to the applicant's solicitor; and that the residue of such money, and any interest to accrue on the said £68 13*s.* 2*d.*, bank annuities, may be paid to the applicant J. T. G., as attorney for W. G., of S., in the colony of N. S. W.

CHAPTER XLII.

PRODUCTION OF DOCUMENTS (*a*).

1928.

Summons for deposit in Court of documents admitted by answer, and for leave to inspect same (*b*).

Formal parts : see ante, No. 60.

on the part of the plaintiff, that the defendant A. B. may be ordered, within (seven) days after service, to produce and leave with the Clerk of Records and Writs (*c*) the several documents (*d*) mentioned in the answer of the said defendant filed the —— day of ——, 187—, and in the first schedule thereto [*or as may be*]; and admitted to be in his possession or power (*e*) : with liberty for the applicant, his solicitors and agents (*f*), to inspect and peruse the same, and take copies and abstracts thereof, and

(*a*) See Dan. Pr. 1673—1700. As to deposit of documents, in a proceeding by special case, see *post*, No. 1965.

(*b*) See Dan. Pr. 1676. For order in like case, see *Dearle* v. *Hinchliff*, M. R. at Chambers, 21 Dec. 1866, Reg. Lib. A. 2780; and see Seton, 1040, No. 1. As to production of the answer, in support of the application, see Dan. r. 1678. As to exceptions for not answering an interrogatory as to documents, see *ib.* 1674.

(*c*) Dan. Pr. 1698; Ord. XLII. 3. On depositing the documents with the Record and Writ Clerk, the original order should, if possible, be produced; and, in every case, a copy of the order and a schedule of the documents must be left at the time the deposit is made. The documents must be made up in a parcel, or enclosed in a wooden or tin box; and the short title of the cause, and the name and address of the solicitor or party making the deposit, must be written on the parcel or box. Strong brown, or cartridge, paper should be used for the parcel. Where the parcel would exceed about twelve inches in length and width, and ten in depth, or fifteen in length, twelve in width, and six in depth, a box will, in general, be required. The box must have a lock and key ; and the key should have a parchment label : with the short title of the cause, and the name of the solicitor or party written thereon. Braithwaite's Pr. 506; Dan. Pr. 1698; *ib.* n. (*b*).

(*d*) The word "documents" is, in practice, considered to comprise all written evidence : Dan. Pr. 1676, n. (*r*).

(*e*) As to the meaning of these words, see Dan. Pr. 1683.

(*f*) As to the meaning of these words, and as to production to a special agent, see Dan. Pr. 1696, 1697.

extracts therefrom, as he shall be advised, at his expense (*g*). And that the said documents may be produced by the Clerk of Records and Writs upon any examination of witnesses in this cause, and at the hearing thereof, as the applicant shall require.

1929.

Summons for leave to inspect, out of Court, documents admitted by answer (*h*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the applicant, his solicitors, and agents, may be at liberty at all seasonable times, upon giving reasonable notice, to inspect at (*State where; as thus:* the offices of Messrs. C. and D., the defendant's solicitors [*Or*, agents], situate No. 85, Lincoln's Inn Fields, in the county of Middlesex), the several documents mentioned in the answer of the said defendant filed the —— day of ——, 187—, and in the first schedule thereto [*or as may be*], and thereby admitted to be in his possession or power; and to take copies and abstracts thereof, and extracts therefrom, as the applicant shall be advised, at his expense (*i*). And that the said defendant may be ordered to produce the said documents upon any examination of witnesses in this cause, and at the hearing thereof, as the applicant shall require.

1930.

Summons, for an affidavit as to the possession of documents, and for deposit in Court of documents admitted thereby: with leave to inspect same (*k*).

Formal parts: see ante, No. 60.

on the part of the plaintiff:

Or, of the defendant A. B. (*l*):

Or, of A. B.: who by an order dated the —— day of ——, 187—, has liberty to attend the proceedings under the decree dated, *&c.* (*m*):

Or, of A. B.: who claims to be a creditor upon the estate of E. F., the testator in the decree dated, *&c.*, named (*n*):

(*g*) See *post*, No. 1942, n. (*i*).

(*h*) See Dan. Pr. 1676, 1696; and notes to No. 1928, *ante*. For order in like case, see Seton, 1040, No. 2.

(*i*) As to the costs of the party producing the documents, for the attendance and making copies, see Dan. Pr. 1696.

(*k*) See Dan. Pr. 1674, 1675, 1676; 15 & 16 Vic. c. 86, ss. 18—20; and notes to No. 1928, *ante*. For order in like case, see *General Steam Navigation Company* v. *Taylor*, V. C. W. at Chambers, 12 Dec. 1866, Reg. Lib. A. 2660; and see Seton, 1040, No. 3. As to the form of the order, when the application for an affidavit is made after an unanswered interrogatory as to documents, see Dan. Pr. 1677.

(*l*) As to an application by a defendant against a plaintiff, see Dan. Pr. 1675, 1678; or against a co-defendant, see *ib.*, 1682.

(*m*) See *Lockwood* v. *Wheelright*, V. C. S. at Chambers, 22 Feb. 1856, Reg. Lib. B. 540.

(*n*) See Dan. Pr. 1065, 1098, 1677, n. (*u*), 1683.

that the defendant A. B.

Or, the plaintiff

Or, C. D.: who by an order dated (*&c.: as above*)

Or, C. D.: who claims to be a creditor (*&c.: as above* (*o*))

may be ordered, within (seven) days after service, to make and file a full and sufficient affidavit,

Or, if against a corporation aggregate, say:

to file a full and sufficient affidavit: to be made by their clerk or other proper officer (*p*):

stating whether he has, or has had, in his possession or power any, and if any, what, documents relating to the matters in question in this cause,

Or, if the application is made by or against a claimant coming in under a decree, say: relating to the claim made by the said A. B. [*Or*, C. D.] against the estate of the testator E. F., under the decree in this cause dated the —— day of ——, 187— [*or as may be* (*q*)],

and accounting for the same. And that the said defendant [*or as may be*] may be ordered, within (seven) days after filing such affidavit, to produce and leave with the Clerk of Records and Writs the documents which by such affidavit shall appear to be in his possession or power: except such of them, if any, as he may by such affidavit object to produce. And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the documents so produced and left, and to take copies and abstracts thereof, and extracts therefrom, as the applicant shall be advised, at his expense. And that the said documents may be produced by the Clerk of Records and Writs upon any examination of witnesses in this cause, and at the hearing thereof, as the applicant shall require. And that the applicant may be at liberty to make such further application, as to all or any of the documents mentioned in such affidavit, as he may be advised.

1931.

Summons, for an affidavit as to the possession of documents, and for leave to inspect same out of Court (*r*).

Proceed as in No. 1930, *ante, to* accounting for the same; *and continue thus:*

And that the said defendant [*or as may be*] may be ordered, at all seasonable times, upon reasonable notice, to produce at (*State where: see ante*, No. 1929), the documents which by such affidavit shall appear to be in his possession or power: except

(*o*) *Re Pine, Pine* v. *Ellis*, M. R. at Chambers, 18 Nov. 1863, Reg. Lib. B. 2267.

(*p*) *Attorney-General* v. *Castleford Local Board of Health*, V. C. B. at Chambers, 29 July, 1870, Reg. Lib. A. 2149; and see Dan. Pr. 1677; Seton, 1042, No. 7.

(*q*) See Dan. Pr. 1065, 1098, 1677, n. (*u*), 1683.

(*r*) *Ibid.* 1676, 1677, 1696; 15 & 16 Vic. c. 86, ss. 18, 20; and notes to No. 1928, *ante*. For order in like case, see *Gibbins* v. *Baseley*, V. C. M. at Chambers, 20 Dec. 1866, Reg. Lib. A. 2788; and see Seton, 1041, No. 4.

such of them, if any, as he may, by such affidavit, object to produce. And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof, and extracts therefrom, as the applicant shall be advised, at his expense. And that the said defendant [*or as may be*] may be ordered to produce the said documents upon any examination of witnesses in this cause, and at the hearing thereof, as the applicant shall require. And that the applicant may be at liberty to make such further application, as to all or any of the documents mentioned in such affidavit, as he may be advised.

1932.

Summons for an affidavit by a defendant as to the possession of documents; and for leave to inspect, out of Court, documents admitted thereby, and by the answer of a co-defendant (*s*).

Formal parts: see ante, No. 60.

on the part of the plaintiff, that the defendant A. B. may be ordered, within (seven) days after service, to make and file a full and sufficient affidavit, stating whether he has, or has had, in his possession or power any, and if any what, documents relating to the matters in question in this cause, and accounting for the same. And that the defendant A. B., as to the documents which by such affidavit shall appear to be in his possession or power: except such of them, if any, as he may by such affidavit object to produce: and the defendant C. D., as to the several documents mentioned in his answer filed the —— day of ——, 187—, and in the first schedule thereto, and thereby admitted to be in his possession or power: may, respectively, be ordered at all seasonable times, upon reasonable notice, to produce the said documents at the places following namely (*State where: see ante*, No. 1929). And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof, and extracts therefrom, as the applicant shall be advised, at his expense. And that the defendants A. B. and C. D., respectively, may be ordered to produce the said documents respectively upon any examination of witnesses in this cause, and at the hearing thereof, as the applicant shall require. And that the applicant may be at liberty to make such further application, as to all or any of the documents mentioned in the said affidavit, as he may be advised.

1933.

Summons for further time to file an affidavit as to documents (*t*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that the time limited by the order dated the —— day of ——, 187—, for the applicant to make and file an affidavit as to documents, may be enlarged until the —— day of ——, 187—; and that the costs of this application may be costs in the cause.

(*s*) See Dan. Pr. 1677, n. (*z*); Seton, 1041, No. 5; 1042, No. 6; and notes to No. 1928, *ante*.

(*t*) See Dan. Pr. 1679. For orders in like case, see *Dicker* v. *Gillespie*,

1934.
Affidavit, admitting the possession of documents (*u*).

Formal parts : see ante, No. 9 (*x*).

1. That I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto annexed (*y*).

2. That I object to produce the said documents set forth in the second part of the said first schedule hereto (*y*).

3. That (*State upon what grounds the objection is made; and verify the facts, so far as may be* (*z*)).

4. That I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit, set forth in the second schedule hereto annexed.

5. That the last-mentioned documents were last in my possession or power on (*State when*).

6. That (*State what has become of the last-mentioned documents; and in whose possession they now are*).

7. That, according to the best of my knowledge, remembrance, information, and belief, I have not now, and never have had, in my own possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, or solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them : other than and except the documents set forth in the said first and second schedules hereto.

The first schedule above referred to.

First part (*y*).

Second part (*y*).

The second schedule above referred to.

V. C. S. at Chambers, 15 Jan. 1864, Reg. Lib. A. 2; *Nowell* v. *Nowell*, V. C. W. at Chambers, 29 Dec. 1865, Reg. Lib. B. 2476; *Upton* v. *Upton*, M. R. at Chambers, 5 Jan. 1869, Reg. Lib. B. 6; *Powis* v. *Adams*, V. C. M. at Chambers, 15 July, 1869, Reg. Lib. B. 2620.

(*u*) Regul. 8 Aug. 1857, r. 24, and Sched. No. 3; and see Dan. Pr. 1679. This form of affidavit should be adhered to, and only varied in so far as may be necessary to meet the circumstances of the case : *ib.* The affidavit must be made, although the party has good reasons against the production : *ib.*

(*x*) All the plaintiffs required by the order to make the affidavit must, as a general rule, join in it : Dan. Pr. 1679.

(*y*) Paragraphs 2 and 3, and the subdivision of the first schedule, are only necessary when the deponent objects to the production of some of the documents.

(*z*) Any objections or reasons against the production should be clearly and distinctly stated in the affidavit; and the documents must be described with sufficient distinctness to enable the Court to order production, if the objections should be overruled : Dan. Pr. 1679. For grounds of objection, see *ib.* 1687, *et seq.*

1935.

Affidavit, denying the possession of any documents (*a*).

Formal parts : see ante, No. 9.

1. That according to the best of my knowledge (*Continue as in ante*, No. 1934, *par.* 7, *to* such matters, or any of them).

1936.

Summons, to consider the sufficiency in form of an affidavit as to documents (*b*).

Formal parts : see ante, No. 60.

on the part of the plaintiff [*or as may be*], to consider the sufficiency of the affidavit of the defendant A. B. [*or as may be*], filed the —— day of ——, 187—, as to the possession of documents, pursuant to the order dated the —— day of ——, 187— ; and that the said defendant [*or as may be*] may be ordered to pay the costs of this application.

1937.

Order thereon, where the affidavit is held to be insufficient (*c*).

Date—title—and appearances.

and upon reading the order dated the —— day of ——, 187— (*Order directing the affidavit to be made*), and an affidavit of the defendant A. B. [*or as may be*] filed the —— day of ——, 187—, in pursuance thereof ; and the Judge being of opinion that the said affidavit is insufficient,

If the deponent applies for, and obtains further time, add : and the said defendant [*or as may be*], by his solicitor, now applying for further time to file a full and sufficient affidavit,

It is ordered, that the time for the said defendant [*or as may be*] to file a full and sufficient affidavit, pursuant to the said order, be enlarged to the —— day of ——, 187—.

If the documents have been ordered to be deposited in Court, add also : And it is ordered, that the said defendant [*or as may be*] have till the —— day of ——, 187—, to produce and leave with the Clerk of Records and Writs, pursuant to the said order, any documents relating to the matters in question in this cause [*or as may be*] which by the affidavit so to be made by him shall appear to be in his possession or power : except such of the same, if any, as he may by such affidavit object to produce. And

it is ordered, that the defendant A. B. [*or as may be*] pay to the plaintiff C. D. [*or as may be*] £——, for the costs of this application.

Or, the costs of this application : to be taxed by the Taxing Master, in case the parties differ.

Or, it is ordered, that the costs of this application be costs in the cause.

(*a*) See Regul. 8 Aug. 1857, r. 24, and Sched. No. 3 ; and Dan. Pr. 1679.

(*b*) See Dan. Pr. 1680.

(*c*) *Ibid.* For order, holding to be insufficient an affidavit as to documents, directing the deponent to pay the costs, and extending the time, see *Smedley* v. *Smedley*, M. R. at Chambers, 10 Feb. 1869, Reg. Lib. B. 186 ; and

1938.
Summons, for the production of documents objected to be produced (*d*).

Formal parts: see ante, No. 60.
on the part of the plaintiff [*or as may be*], that notwithstanding the objection raised by the defendant A. B. [*or as may be*], by his affidavit filed the —— day of ——, 187—, to produce the documents hereinafter mentioned, the said defendant [*or as may be*] may be ordered, on or before the —— day of ——, 187—, or subsequently within (seven) days after service, to produce and leave with the Clerk of Records and Writs [*or as may be*] the several documents mentioned in his said affidavit, and in the second part of the first schedule thereto [*or as may be*], and thereby admitted to be in his possession or power. And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the said documents, and take copies (*Continue as in* No. 1930, *ante, to the end*).

1939.
Summons, for an affidavit as to the possession of specified documents (*e*).

Formal parts: see ante, No. 60.
on the part of the plaintiff, that the defendant A. B. may be ordered, on or before (*&c.: as in* No. 1938, *ante*), to make and file a further and full and sufficient affidavit, stating whether he has, or has had, in his possession or power any, and if any which, of the following documents relating to the matters in question in this cause, and accounting for the same, that is to say: (*Specify the documents*). And that the said defendant may be (*Continue as in* No. 1930, *ante, to the end*).

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without costs, *Winder* v. *Waters*, V. C. J. at Chambers, 20 Dec. 1869, Reg. Lib. B. 3290; and see Seton, 1043, No. 10. As to the effect of an order in this form, see Dan. Pr. 1680. Where the order directing the affidavit to be made has not been duly served, the further order, holding the affidavit to be insufficient, should repeat the directions of the former order as to filing a full and sufficient affidavit, and depositing the documents in Court, within a limited time, or directing their production out of Court (see *ante*, Nos. 1930, 1931); and must, in such case, be indorsed, served, and disobeyed, and an affidavit of such service and disobedience be produced to the Record and Writ Clerk, before process of contempt can be issued: *ib.* n. (*g*).

(*d*) See Dan. Pr. 1679. For order for production in Court in like case, see *Dearle* v. *Hinchliff*, M. R. at Chambers, 21 Dec. 1866, Reg. Lib. A. 2780; and for order for production out of Court, in like case, see *Finch* v. *Westrope*, M. R. at Chambers, 29 April, 1870, Reg. Lib. A. 1662; and see Seton, 1042, No. 8.

(*e*) *Zambaco* v. *Cassavetti*, M. R. at Chambers, 9 Dec. 1869, Reg. Lib. B. 3067; and see Dan. Pr. 1681; and notes to No. 1928, *ante*. As to when an application in this form should be made, see Dan. Pr. 1681. The party from whom production is sought cannot be cross-examined on his affidavit or answer: *ib.* 1680. As to the course when the production is sought by a defendant, see *ib.* 1676; and for form of concise statement and interrogatories by a defendant, for examination of plaintiff, see *ante*, No. 1699.

1940.

Summons, for leave to seal up irrelevant matter (*f*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that he may be at liberty to seal up such parts of the documents mentioned in the (first) schedule to his answer—*Or*, affidavit—filed in this cause on the —— day of ——, 187—, as, according to an affidavit to be made by him, do not relate to the matters in question in this cause [*or as may be*].

1941.

Affidavit of sealing up irrelevant matter (*g*).

Formal parts: see ante, No. 9.

1. *Identify the documents; as thus:* The two documents now produced and shown to me, and marked respectively A. and B. (*h*), are the documents described in (the second part of the first schedule to) my answer [*Or*, affidavit] filed in this cause on the —— day of ——, 187—, as (*State what*).

2. I have sealed up such parts of the said exhibited documents marked A. and B. as do not relate to the matters in question in this cause [*or as may be*].

3. No portion of the parts sealed up of the said documents relates to the said matters in question, or any of them.

1942.

Memorandum to be used on inspecting documents deposited at the Record and Writ Clerks' office (*i*).

In Chancery.

(*Short title, and reference to the record.*)

For inspecting documents.

Dated this —— day of ——, 187—.

(*Add name, &c., of solicitor or party making the inspection: see ante*, No. 4, *or* 7.)

(*f*) See Dan. Pr. 1681, 1682. For order in like case, see *Begbie* v. *Fenwick*, V. C. M. at Chambers, 10 Dec. 1866, Reg. Lib. A. 2710; and see Seton, 1040, No. 2.

(*g*) See Dan. Pr. 1681, 1682.

(*h*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 43.

(*i*) See Dan. Pr. 1698. Inspection of documents deposited under an order will be refused, as well to the parties depositing the documents, as to a plaintiff or defendant: unless he is suing in person, or is introduced by his solicitor. Where liberty to inspect is given in the ordinary form, the party entitled to inspect may do so in the absence of the party depositing the documents; where, therefore, it is desired that this practice should be modified, the order should be qualified accordingly. A defendant is not allowed to inspect documents deposited by a co-defendant, unless expressly authorised so to do by order: or the inspection is sanctioned by such co-defendant, or by the plaintiff. Copies of, or extracts from, documents inspected may be taken by the person making the inspection, without payment of any fee; and any such copies or extracts may be obtained by him from the Record and Writ Clerks' office, on payment of the usual fees for the same. No fee is payable by a party inspecting his own documents; nor by other parties, where the inspection is merely

1943.

Notice of motion, or summons, for the delivery out of documents deposited in Court, under an order (*k*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that (*Describe what; as thus:* all the documents

Or, the documents mentioned in the schedule hereto),

deposited by him with the Record and Writ Clerk, pursuant to the order dated the —— day of ——, 187—, may be delivered out to the applicant.

1944.

Petition of course, for the like: by consent (*l*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Pursuant to an order dated the —— day of ——, 187—, made in this cause [*Or*, matter] on the application of the defendant A. B. [*or as may be*], certain documents specified in the first schedule to an affidavit of your petitioner filed the —— day of ——, 187—[*or as may be*], were deposited by him with the Clerk of the Records and Writs.

2. The purpose for which the said documents were so deposited being now satisfied, your petitioner is desirous to have the said documents delivered out to him.

Your petitioner therefore humbly prays that, by consent (*m*) of the defendant A. B. [*or as may be*], all the documents deposited by your petitioner as aforesaid may be delivered out to him.

And your petitioner will ever pray, &c.

1945.

Receipt, on delivery out of deposited documents (*n*).

Received the documents [*or as they may be described in the order*], mentioned or referred to in the above order.

Dated this —— day of ——, 187—.

(*Signature of the party to whom the documents are ordered to be delivered.*)

Witness to the signature of the said A. B. }

C. D., of (*residence and addition*).

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made to select a document on bespeaking a copy of it: Braithwaite's Pr. 506, 508, 509, 512; Dan. Pr. 1698; *ib.* n. (*c*). For the fees payable on inspection by other parties for other purposes, and for copies and extracts, see *ante*, No. 1554 (5).

(*k*) See Dan. Pr. 1699. For order in like case, see *Jones* v. *Garrad*, V. C. S. at Chambers, 13 Feb. 1864, Reg. Lib. A. 253 (by consent); and see Seton, 1062.

(*l*) See Dan. Pr. 1699; Braithwaite's Pr. 507.

(*m*) For form of consent, see *ante*, No. 59.

(*n*) See Dan. Pr. 1699. A copy of the order for delivery out: or of so much

1946.
Production, by the Record and Writ Clerk, at the hearing of the cause, or otherwise, of documents deposited with him under an order (*o*).

See *ante*, for the following Forms :
Memorandum bespeaking an attendance in the Court or its offices, with documents deposited : No. 738.
Motion paper, for production elsewhere of documents deposited : No. 739.
Petition of Course, for the like : No. 740.
Affidavit in support of the motion or petition : No. 741.
Memorandum bespeaking attendance with the documents, in like case : No. 742.

1947.
Attachment, for not filing an affidavit as to, or not depositing, documents (*p*).

Præcipe : / *The writ :* / *Indorsement :* } The same as Nos. 932—934, *ante :* describing the contempt correctly.

1948.
Affidavit in support of the attachment (*q*).

Formal parts : see ante, No. 9.

1. *Prove service of the order directing the affidavit to be made, or documents to be deposited in Court : see ante*, Nos. 48, 929.

thereof as directs such delivery : with a receipt signed by the person to whom the delivery out is directed to be made, and witnessed : must be left, and the original order must be produced, at the Record and Writ Clerks' office, at the time the original application for the delivery is made. It is not necessary that the party to whom the documents are ordered to be delivered should personally attend at the Record and Writ Clerks' office to receive them ; nor is a power of attorney necessary to authorise another person to receive them on his behalf. If the documents to be delivered out comprise part only of the documents deposited in the cause, then the documents to be delivered out must be selected by the solicitor, and compared by the Record and Writ Clerk with the order directing the delivery, and afterwards handed to the person applying for them. In such case, the Record and Writ Clerk will retain the box or parcel containing the rest of the documents in the cause, and place therein the copy order, and receipt ; and will make an entry in the "Exhibit Book" that the other documents have been delivered out : Dan. Pr. 1699 ; Braithwaite's Pr. 507.

(*o*) See Dan. Pr. 1698, 1699 ; and notes to Nos. 738—742, *ante*.

(*p*) As to the process to enforce an order for an affidavit, or production of documents, see Dan. Pr. 1699, 1700 ; Braithwaite's Pr. 171 ; and notes to Nos. 313, 932—934, *ante*. For attachment in like case, see *Kelly* v. *Hutton*, 25 July, 1867, Reg. Lib. A. 1642 ; *Re Casey*, *Neal* v. *Casey*, 5 Aug. 1870, Reg. Lib. A. 2149 ; and for order for the Serjeant-at-Arms, on the sheriff's return *non est inventus*, see *Kelly* v. *Hutton*, 25 July, 1867, Reg. Lib. A. 1788. For *pluries distringas* against a corporation aggregate, for not filing a sufficient affidavit as to documents, see *Hanslip* v. *Norwich and Spalding Railway Company*, 11 Feb. 1864, Reg. Lib. A. 209. For attachment for not leaving documents with the Record and Writ Clerk, see *Kelly* v. *Hutton*, 16 July, 1867, Reg. Lib. A. 1642.

(*q*) See Dan. Pr. 1700 ; Braithwaite's Pr. 171.

Where the contempt consists in not filing the affidavit, add: 2. I have this —— day of ——, 187—, searched in the proper "Index of affidavits" (*r*), kept by the Clerks of the Records and Writs of this honourable Court; and it does not appear therefrom that any such affidavit as is by the said order required to be made and filed by the said defendant A. B. [*or as may be*] has been filed in the office of the said Clerks of Records and Writs; and I verily believe that the said defendant A. B. [*or as may be*] has not made and filed such affidavit, as by the said order he was commanded.

(*r*) As to searches for affidavits, see *ante*, No. 1537, n. (*g*).

CHAPTER XLIII.

SPECIAL CASE (*a*).

1949.

Motion paper, to appoint special guardian of lunatic, or infant (*b*).

Formal parts: see ante, No. 53 ; *but entitle the motion paper thus:*

In Chancery.

In the matter of A. B., a person of unsound mind not so found [*Or*, an infant]; and of the Act 13th & 14th Victoria, chapter 35, intituled "An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England."

To move for C. D., of (*residence and addition*), on behalf of the above named lunatic A. B., that the said C. D.

Or, To move on behalf of the above named infant A. B., that C. D., of (*residence and addition*),

may be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in a special case proposed to be stated for the opinion of this Court, as to (*State object of the case; as thus:* the construction of the will of L. N., deceased): in which the said A. B. is interested.

An affidavit in support accompanies.

1950.

Notice of motion, for the like (*c*).

Formal parts: see ante, No. 55.

on the part of C. D. (*&c.: Continue as in* No. 1949, *ante, to* interested).

1951.

Affidavit in support of motion, in the case of a lunatic (*c*).

In Chancery.

(*Title, as in* No. 1949, *ante.*)

We, E. F., of (*Place of business*), gentleman, the solicitor in this matter for the above named A. B., and B. E., of (*Continue as in* No. 127, *ante, to* make oath and say):

(*a*) As to special cases, see Dan. Pr. 1701—1711; 13 & 14 Vic. c. 35, ss. 1—18, 30—35. As to filing a certificate of lower scale, see *ante*, No. 1546; and for form of certificate of such scale being applicable, see *ante*, No. 1548.

(*b*) See Dan. Pr. 1702; 13 & 14 Vic. c. 35, s. 5. For orders in like case, see *Collyer* v. *Collyer*, V. C. M. 10 Dec. 1866, Reg. Lib. A. 2771; *Re Malam*, V. C. J. 21 Jan. 1869, Reg. Lib. B. 113; and see Seton, 33. Neither the motion paper or notice of motion, nor the affidavit in support, must be entitled in the matter of the special case: Dan. Pr. 1702, n. (*q*).

(*c*) See Dan. Pr. 1702.

And first I the said E. F. for myself say, as follows:

1. The said A. B. is interested in the subject matter of a special case proposed to be stated for the opinion of this honourable Court, under the provisions of the above mentioned Act, as to the construction of the will of L. N., deceased [*or as may be*].

2. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

3. I know and am well acquainted with C. D., of (*residence and addition: as in the motion paper, or notice of motion*), the person proposed to be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in the said special case.

4. The said C. D. is (*State degree of relationship to, or connection with the family of, the lunatic; as thus:* the brother of the said A. B.); and has no interest in the subject matter of the said proposed special case adverse to the interest therein of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be appointed such guardian as aforesaid.

5. *Show means of knowledge.*

And I the said B. E. for myself say, as follows:

6. I have been in actual practice (*Continue as in ante*, No. 127, *par.* 6, *to the end of that form*).

Sworn (*&c.: see ante*, No. 13).

1952.

Affidavit in support of motion, in the case of an infant (*d*).

In Chancery.

(*Title, as in* No. 1949, *ante.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this matter for the above named A. B., make oath and say as follows:

1. The said A. B. is interested (*Continue as in* No. 1951, *ante, to the end of par.* 1).

2. 3. 4. (*Same as ante*, No. 1951, *par.* 3. 4. *and* 5.)

Sworn (*&c.: see ante*, No. 12).

1953.

Formal parts of a special case (*e*).

In Chancery.

(*Branch of Court* (*f*).)

Between (*Entitle the case as a cause between some or one of the parties interested, or claiming to be interested, as*

(*d*) See Dan Pr. 1702.

(*e*) *Ibid.* 1703. The case to be filed must be written on paper of the same description and size as that on which bills are printed: Ord. 6 Mar. 1860, r. 16. As to such paper, see *ante*, No. 195. The case must also bear a 20*s.* chancery fee fund stamp: *ante*, No. 1554 (5); and be filed at the Record and Writ Clerks' office: 13 & 14 Vic. c. 35, s. 10; Dan. Pr. 1704. The plaintiff must take an office copy of the case, and of every new engrossment thereof filed; but the defendant need not do so: Dan. Pr. 1704.

(*f*) The case must be marked with the name of the Judge to whose Court the special case is to be attached, in the same manner as a bill: Dan. Pr. 04; 13 & 14 Vic. c. 35, s. 32. As to marking a bill, see *ante*, No. 197.

plaintiffs or plaintiff, and the others of them as defendants (*g*)).

Special case stated for the opinion of the High Court of Chancery, pursuant to the Act 13th & 14th Victoria, chapter 35, intituled An Act (*&c.: see ante*, No. 1949).

1. } (*State concisely, in numbered paragraphs, such facts and*
2. } *documents as are necessary to enable the Court to decide the*
3. } *questions raised by the case* (*h*).)

The questions submitted for the opinion of the Court are:

1. Whether, *&c.*
2. Whether, *&c.*

A. B., counsel for the plaintiffs.
C. D., counsel for the defendants (*i*).

NOTE.—This special case is filed by J. J., of Lincoln's Inn, in the county of Middlesex [*or as may be: see ante*, No. 4], solicitor for the above named plaintiffs (*k*).

1954.

Notice of filing the case (*l*).

Formal parts: see ante, No. 54.

Take notice, that I have this day filed the special case in this cause.

1955.

Præcipe for appearance (*m*).

In Chancery.

(*Reference to the record.*)

A. } Enter an appearance for A. B., to special case [*Or*,
v. } amended special case] at the suit of B. A.
B. }

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance: see ante*, No. 4, *or* 7.)

(*g*) As to the necessary parties to a special case, see Dan. Pr. 1703. In the title, lunatics and infants must be described as such, and their committees, guardians, or special guardians, be named therein; and where a married woman is named as a plaintiff, and her husband as a defendant, a next friend for her must be named in the title. The case must also show how the guardian, or special guardian, of a lunatic or infant was constituted: Dan. Pr. 1702, 1703; 13 & 14 Vic. c. 35, s. 7.

(*h*) See Dan. Pr. 1703; 13 & 14 Vic. c. 35, s. 8.

(*i*) As to counsel's signature, see Dan. Pr. 1703; 13 & 14 Vic. c. 35, s. 10.

(*k*) See Dan. Pr. 378, 1704; Ord. III. 2, 5; 13 & 14 Vic. c. 35, s. 32.

(*l*) See Dan. Pr. 1704.

(*m*) *Ibid.*; 13 & 14 Vic. c. 35, ss. 10, 11. For the practice as to entering an appearance, see Dan. Pr. 460, 1704; Braithwaite's Pr. 330; and *ante*, No. 484, *et seq.*, and notes thereto.

1956.
Notice of appearance (*n*).

Formal parts: see ante, No. 54.

Take notice, that I have this day entered an appearance for the defendant A. B. to the special case [*Or*, amended special case] herein.

1957.
Registry of a special case as a *lis pendens*, and satisfaction thereof (*o*).

See the following Forms, *ante*.

Memorandum for the registry, or re-registry, as a *lis pendens*: No. 214.

Acknowledgment of satisfaction thereof: No. 215.

Petition of course, special petition, notice of motion, and summons, for the entry of satisfaction thereof: Nos. 216—218.

1958.
Motion paper, to amend special case, by consent (*p*).

Formal parts: see ante, No. 53.

To move on behalf of all parties (*q*), that the plaintiff may be at liberty to amend the special case herein as he may be advised.

The case has not been set down for hearing.

1959.
Petition of course, for the like (*r*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed a special case in this cause against the defendants: who have appeared thereto; but the said case has not been set down for hearing.

2. Your petitioner is now desirous to amend the said case.

Your petitioner therefore humbly prays, that, by consent of the defendants (*s*), he may be at liberty to amend the said special case, as he may be advised.

And your petitioner will ever pray, &c.

(*n*) See Dan. Pr. 460, 1704.

(*o*) *Ibid.* 1704; and notes to Nos. 214—218, *ante*.

(*p*) For order in like case, on motion for all parties, see *Fletcher* v. *Fletcher*, V. C. S., 19 Feb. 1864, Reg. Lib. A. 281. As to amending a special case, see generally, Dan. Pr. 1704; Braithwaite's Pr. 315; and at the hearing, Dan. Pr. 1708.

(*q*) Unless the motion is made on behalf of all parties, a separate consent brief for the defendants will be requisite.

(*r*) For order in like case, see *Mure* v. *Mure*, M. R. 2 Dec. 1869, Rolls' Lib.; and see Dan. Pr. 1959.

(*s*) For form of consent, see *ante*, No. 59.

1960.
Præcipe for amendment of a special case (*t*).

(*Short title.*)
For amending special case.
C. D., plaintiff's solicitor [*Or*, agent].

1961.
Certificate of Record and Writ Clerk to set down special case, where no disability (*u*).

Formal parts : see ante, No. 852 : *adding* "By special case," *after the short title.*
These are to certify that this cause is in a fit state to be set down for hearing : as appears by my book.

1962.
Indorsement thereon (*u*).

All parties are *sui juris.*
C. D., plaintiff's solicitor.
——, 187—,

1963.
Notice of motion, to set down special case, where there is a disability (*y*).

Formal parts: see ante, No. 55.
on the part of the plaintiff, that he may be at liberty to set down for hearing the special case filed in this cause.
An affidavit in support accompanies.

1964.
Certificate of Record and Writ Clerk, in support (*z*).

Formal parts : see ante, No. 1961.
These are to certify, that the special case in this cause has been duly filed, and that appearances have been entered thereto for all the defendants : as appears by my book.

(*t*) See Dan. Pr. 1705. As to when the record can be amended, and how, and when a reprint must be filed, see *ib.* The *præcipe* must bear a 10*s.* chancery fee fund stamp : *ante*, No. 1554 (5). A new engrossment of the special case must bear a 20*s.* like stamp : *ib.* ; Braithwaite's Pr. 316. As to a new appearance by the defendant to an amended case, see *ib.* 330 ; Dan. Pr. 1705. As to revivor of a special case, see Dan. Pr. 1705, 1707.

(*u*) See Braithwaite's Pr. 437 ; Dan. Pr. 1706. For the practice as to setting down a special case where all parties are *sui juris*, see Dan. Pr. 1707 ; 13 & 14 Vic. c. 35, s. 12 ; Reg. Regul. 15 Mar. 1860, r. 8 ; Braithwaite's Pr. 436, 437.

(*y*) See Dan. Pr. 1706. For orders in like case, see *Adnutt* v. *Wright*, M. R. 11 May, 1865, Reg. Lib. A. 887 ; *Hollis* v. *Allan*, V. C. K. 14 Dec. 1865, Reg. Lib. A. 2430 ; *Savage* v. *Snell*, V. C. J. 16 June, 1870, Reg. Lib. B. 1642 ; and see Seton, 33. As to the persons to be served with the notice, see Dan. Pr. 1706 ; 13 & 14 Vic. c. 35, s. 13 ; and for the practice generally as to setting down a special case where any party to it is under disability, see Dan. Pr. 1706, 1707 ; 13 & 14 Vic. c. 35, ss. 12, 13 ; Reg. Regul. 15 Mar. 1860, r. 8 ; Braithwaite's Pr. 436, 437. For form of affidavit of service of the notice, see *ante*, No. 47.

(*z*) See Dan. Pr. 1706, n. (*f*) ; Braithwaite's Pr. 436, 437.

1965.
Summons for deposit in Court of documents referred to in the case (*a*).

Formal parts : see ante, No. 60.
on the part of the plaintiff [*Or*, defendant], that the defendant [*Or*, plaintiff] may be ordered, within (seven) days after service, to produce and leave with the Clerk of Records and Writs the indenture dated the —— day of ——, 187— [*or as may be*], admitted by the special case filed in this cause to be in his possession ; and that the parties to this cause, their solicitors and agents, may be at liberty to inspect and peruse the said document, and take copies and abstracts thereof, and extracts therefrom, as they may be advised ; and that the said document may be produced by the Clerk of Records and Writs upon the hearing of the said special case, as the parties to this cause, or either of them, may require.

1966.
Subpœna to hear judgment (*b*).

Præcipe:
The writ:
Indorsement:
} The same as Nos. 854—856, *ante*.

1967.
Notice that special case has been set down for hearing (*c*).

Formal parts : see ante, No. 54.
Take notice, that I have this day set down the special case in this cause for hearing.

1968.
Brief for counsel (*d*).

In Chancery.
(*Name of Judge.*)
(*Full title of the cause, and reference to the record.*)
Brief for the plaintiff [*Or*, defendant A. B.].
——, 187—. On this date, the following special case was filed in this cause : (1) Contents.

Special case stated (*Set out the special case, verbatim : from these words to the end* (*d*)).

(*a*) See Dan. Pr. 1710; 13 & 14 Vic. c. 35, s. 18. As to the deposit, production, and identity of documents for the hearing, see *ib.*; and as to the production of documents generally, see *ante*, No. 1928, *et seq.*

(*b*) See Dan. Pr. 1707; 13 & 14 Vic. c. 35, s. 12; Braithwaite's Pr. 259; and notes to Nos. 854—856, *ante*.

(*c*) See Dan. Pr. 1967, n. (*o*). For order transferring a special case from cause book of one V. C. to that of another, see *Senior* v. *Senior*, L. C. 11 Jan. 1869, Reg. Lib. B. 10.

(*d*) Counsel's brief will ordinarily consist of a copy of the special case, of the affidavits filed in support (if any), and of any material documents not sufficiently set out in the case : accompanied by such observations as may be deemed necessary : Dan. Pr. 1707. As to the papers to be left for the Judge,

(2) Indorsement.

In Chancery.
(*Name of Judge.*)
A. }
v. } Brief
B. } Special case:
stated pursuant to 13 & 14 Vic. c. 35.
For the plaintiff [*Or*, defendant A. B.].
Mr. C. (*Continue as in* No. 867, *ante, to the end*).

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see *ib.*; and as to the hearing generally, *ib.* 1708, 1709; 13 & 14 Vic. c. 35, ss. 8, 14. For forms of decrees on the hearing, see Seton, 30, 34. As to passing, entering, enrolling, rehearing, and appealing against such decrees, see Dan. Pr. 1709; 13 & 14 Vic. c. 35, ss. 16, 33. As to ordering payment of the costs of a special case, see *ib.* s. 32; Dan. Pr. 1710; Morgan & Davey, 222—224. For precepents of bills of costs on a special case, see Morgan & Davey, 480—484.

CHAPTER XLIV.

SOLICITORS (*a*).

SECTION I.—AUTHORITY TO PROSECUTE OR DEFEND.—CONSENT TO ACT AS RELATOR, NEXT FRIEND, OR GUARDIAN AD LITEM.

1969.
Authority by an adult, to prosecute a suit or proceeding (*b*).

I, A. B., of (*residence and addition*), authorise Mr. C. D., of (*Place of business*), to commence and prosecute a suit

Or, such proceedings as may be necessary and proper

on my behalf, in the High Court of Chancery, for (*State, succinctly, the object; as thus:* the administration of the estate of E. F., deceased). Dated this —— day of ——, 187—.

A. B.

1970.
The like: by indorsement on bill, or originating summons (*b*).

I, the within named A. B., authorise Mr. C. D., of (*Place of business*), to file this bill [*Or*, issue this summons], and to prosecute on my behalf the suit [*Or*, proceeding] to be commenced thereby. Dated, *&c.*

A. B.

1971.
Authority by an adult, to defend a suit or proceeding (*c*).

In Chancery.

(*Short title, and reference to the record.*)

I, (the defendant) A. B., of (*residence and addition*), authorise

(*a*) See Dan. Pr. 1712—1756. As to the admission and readmission of solicitors and attornies, and generally as to their duties and liabilities, see 6 & 7 Vic. c. 73, as amended by 7 & 8 Vic. c. 86; 14 & 15 Vic. c. 88; 23 & 24 Vic. c. 127; 33 & 34 Vic. c. 28; Ord. III. 1; Chitty's Arch. 24—158; Chitty's Forms, 11; Pulling's Law of Attorneys, *passim*; and Dan. Pr. 1712, *et seq.* As to the appointment of solicitors as commissioners to administer oaths in Chancery, see Braithwaite's Oaths in Chan. 1—11.

(*b*) As to the authority necessary to commence a suit or proceeding, see Dan. Pr. 259, 260; and as to the mode of staying an unauthorised suit, see *ib* 260—262; and *ante*, No. 643, *et seq.*, and notes thereto.

(*c*) As to the authority to defend a suit or proceeding, see Dan. Pr. 260, 456.

Mr. C. D., of (*Place of business*), to appear to, and defend this suit on my behalf.

Or, to appear and act on my behalf, on the hearing of the petition presented by [*Or*, summons taken out on behalf of] E. F. in this matter—*or as may be.*

Dated, *&c.*

A. B.

1972.

Authority by the relator in an information, to use his name (*d*).

I, A. B., of (*residence and addition*), authorise Mr. C. D., of (*Place of business*), to use my name as relator in the information about to be filed in the High Court of Chancery, for the purpose of (*State, succinctly, what*); and to prosecute the suit to be commenced thereby. Dated, *&c.*

A. B.

1973.

The like: by indorsement on the information (*d*).

I, the within named A. B., authorise Mr. C. D., of (*Place of business*), to use my name as relator in the within information about to be filed; and to prosecute the suit to be commenced thereby. Dated, *&c.*

A. B.

1974.

The like, in the place of a deceased relator (*e*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., of (*residence and addition*), authorise Mr. C. D., of (*Place of business*), to use my name in this suit, as relator in the information therein, in the place of E. F., deceased; and to continue the prosecution of this suit. Dated, *&c.*

A. B.

1975.

Authority by the next friend of a person under disability, to prosecute a suit or proceeding (*f*).

I, A. B., of (*residence and addition*), authorise Mr. C. D., of (*Place of business*), to commence and prosecute a suit in

Or, to make an application to

the High Court of Chancery, on behalf of E. F., an infant,

Or, a person of unsound mind, not so found,

Or, the wife of G. F., of, *&c.*,

(*d*) See Dan. Pr. 15. As to relators, and the authority to use their names, see *ib.* 13, *et seq.*, 260. The authority must be filed with the information: see 15 & 16 Vic. c. 86, s. 11.

(*e*) As to the needful proceedings on a relator's death, see Dan. Pr. 16; and *ante*, No. 1679.

(*f*) As to next friends, and the authority to use their names, see Dan. Pr. 66, *et seq.*, 82, 83, 102—106, 260; and see *ante*, Nos. 102—107, 121, 138—140, and notes thereto. In the case of a bill, or an originating summons, the authority is filed with the bill or duplicate summons: see 15 & 16 Vic. c. 86, s. 11.

for (*State, succinctly, the object; as thus:* the administration of the estate of B. C., deceased—*Or*, for the appointment of a guardian of the person and estate of the said E. F., and an allowance for his maintenance); and to use my name in such suit [*Or*, proceeding] as the next friend of the said E. F. Dated, *&c.*

A. B.

1976. Authority by the next friend of a person under disability: by indorsement on the bill or summons (*g*).

I, the within named A. B., authorise Mr. C. D., of (*Place of business*), to file this bill [*Or*, issue this summons], and to prosecute the suit [*Or*, proceeding] to be commenced thereby; and to use my name as the next friend of the within named E. F. therein. Dated, *&c.*

A. B.

1977. Authority by new next friend, to use his name, and continue proceedings (*h*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., of (*residence and addition*), consent to be appointed, and to act as, the next friend of the plaintiff [*Or*, applicant] C. D. in this suit [*Or*, proceeding], in the place of E. F. And I authorise Mr. G. H., of (*Place of business*), to use my name as such next friend, and to continue the prosecution of this suit [*Or*, proceeding].

A. B.

1978. Consent of a married woman, to a suit or proceeding in her name, by a next friend (*i*).

I, E. F., of (*residence*), the wife of G. F., of (*residence and addition*), consent to a suit [*Or*, proceeding] being commenced and prosecuted in the High Court of Chancery, on my behalf, by A. B., of (*residence and addition*), as my next friend, for (*State, succinctly, the object; as thus:* the administration of the estate of B. C., deceased). Dated, *&c.*

E. F.

1979. Consent to act as guardian *ad litem* for a person under disability (*k*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., of (*residence and addition*), consent to be appointed guardian *ad litem* of C. D., a defendant in this suit.

[*Or*

(*g*) See *ante*, No. 1975, n. (*f*).

(*h*) See Dan. Pr. 75, 76, 105. As to the needful proceedings on a next friend's death, incapacity, or removal, see *ib.* 74—76, 105, 106, 260; and see *ante*, No. 1021, *et seq.*, and notes thereto.

(*i*) See Dan. Pr. 102—104. Where the married woman is an infant, her consent is unnecessary: *ib.* 103, n. (*e*); but see *Re Potter*, Law Rep. 7 Eq. 484, 487, V. C. M., cited *ib.* As to staying proceedings where the consent has not been obtained, see *ante*, Nos. 654, 655, and notes thereto.

(*k*) As to guardians *ad litem*, see *ante*, Nos. 108—120, 122—137, 141—143, 1675, 1749, and notes thereto.

Or, who has been served with notice of the decree, dated, *&c.*, in this suit.

Or, of C. D., who has been served with the petition presented by—*Or*, summons taken out on behalf of—E. F. in this suit —*Or*, matter—*or as may be.*

And I authorise Mr. G. H., of (*Place of business*), to defend this suit,

Or, to obtain an order to attend the proceedings under the said decree,

Or, to appear at the hearing of the said petition—*Or*, summons—*or as may be*,

on behalf of the said C. D., by me as such guardian.

Dated, *&c.*

A. B.

1980.

Consent of a new guardian *ad litem* to act (*l*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., of (*residence and addition*), consent to be appointed, and to act, in the place of L. M., as guardian *ad litem* for C. D., a defendant in this suit.

Or, for C. D., who has obtained an order for leave to attend the proceedings under the decree in this suit.

Or, for C. D., who has been served with the petition presented by—*Or*, summons taken out on behalf of—E. F. in this suit —*Or*, matter—*or as may be.*

And I authorise Mr. G. H., of (*Place of business*), to defend this suit,

Or, to attend the said proceedings,

Or, to appear upon the said petition—*Or*, summons—*or as may be*,

on behalf of the said C. D., by me as such guardian.

Dated, *&c.*

A. B.

1981.

Attestation to retainer or consent by a marksman.

The mark
×
of A. B.

This paper writing was read over by me to the above named A. B.; and he appeared perfectly to understand the same, and made his mark thereto in my presence :

X. Y., of (*residence and addition*).

(*l*) See *ante*, No. 1979, n. (*k*).

Section II.—Change of Solicitor, or Agent (*m*).

1982. Motion paper by client, to change his solicitor (and agent) (*n*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., of (*Place of business*), as his solicitor: instead of Mr. E. F., of (*Place of business*).

If so: And that Mr. G. H., of (*Place of business*), may be his agent, instead of Mr. L. M., of (*Place of business*).

1983. Petition of course, for the like (*o*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Your petitioner lately employed Mr. E. F., of (*Place of business*), as his solicitor in this cause [*Or*, matter].

If so: who acted by Mr. L. M., of (*Place of business*), as his agent.

2. Your petitioner is now desirous to employ Mr. C. D., of (*Place of business*), as his solicitor.

If so: and that Mr. G. H., of (*Place of business*), may be his agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of the said Mr. E. F.

If so: and that the said Mr. G. H. may be the agent of your petitioner therein, in the place and stead of the said Mr. L. M.

And your petitioner will ever pray, &c.

(*m*) See Dan. Pr. 379, 1723—1725; Ord. III. 3; Seton, 854, *et seq.* For order for taxation of plaintiffs' costs of suit, after a change of their solicitor, and directing the costs up to such change to be paid to the late solicitor, and the subsequent costs to his successor, see *Peterson* v. *Peterson*, M. R. 16 Feb. 1867, Reg. Lib. B. 427. As to when an application may be made by a new solicitor, without an order to change, see Dan. Pr. 1724. As to when an order of course to change will be irregular, see *ib.* 1723. As to service of an order to change a solicitor or agent, and production to the Record and Writ Clerk, see Dan. Pr. 1724; Braithwaite's Pr. 563, 564.

(*n*) See Dan. Pr. 379, 1723; Ord. III. 3. For order in like case, see *Dunn* v. *Brown*, M. R. 9 Nov. 1870, Reg. Lib. A. 2652; and see Seton, 854, No. 1.

(*o*) See Dan. Pr. 379, 1723. For orders in like case, see *Capper* v. *Cambrian Railway Company*, M. R. 1 Jan. 1867, and *Ekins* v. *Morris*, M. R. 3 Dec. 1869: Rolls' Lib.; and on the petition of infant plaintiffs, by their next friend, see *Staniland* v. *Staniland*, M. R. 15 Mar. 1864; and of a married woman (co-

1984.

Motion paper by client, to appoint a London solicitor, instead of a country solicitor and agent (*p*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., of (*Place of business*), as his solicitor: instead of Mr. E. F., of (*Place of business*), his present solicitor, who acted by his agent, Mr. L. M., of (*Place of business*).

1985.

Petition of course, for the like (*q*).

Proceed as in No. 1983, *ante, to the end of par.* 1.

2. Your petitioner is now desirous to employ Mr. C. D., of (*Place of business*), as such solicitor.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of the said Mr. E. F., his present solicitor, who acted by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

1986.

Motion paper, by client, to appoint a country solicitor and agent, instead of a London solicitor (*p*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., of (*Place of business*), as his solicitor: instead of Mr. E. F., of (*Place of business*), his present solicitor: the said Mr. C. D. to act by his agent, Mr. G. H., of (*Place of business*).

1987.

Petition of course, for the like (*q*).

Proceed as in No. 1983, *ante, to* as follows:

1. Your petitioner lately employed Mr. E. F., of (*Place of business*), as his solicitor in this cause [*Or*, matter].

2. Your petitioner is now desirous to employ Mr. C. D., of (*Place of business*), as such solicitor: to act by Mr. G. H., of (*Place of business*), as his agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of

defendant with husband), on obtaining a judicial separation: see *Waite* v. *Morland*, M. R. 17 Dec. 1869; and of a person having liberty to attend the proceedings: see *Re Thexton, Thexton* v. *Edmondson*, M. R. 25 Oct. 1866: all in Rolls' Lib.

(*p*) See Dan. Pr. 1723.

(*q*) *Ibid.* For orders in like case, see *Attorney-General* v. *Iles*, M. R. 9 Jan. 1867, and *Winder* v. *Winder*, M. R. 1 Dec. 1869: Rolls' Lib.

the said Mr. E. F.; and that the said Mr. C. D. may act by his agent, the said Mr. G. H.

And your petitioner will ever pray, &c.

1988. Motion paper, by client, to act in person, instead of by a solicitor (and agent) (*s*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff [*or as may be*], for leave to prosecute [*Or*, defend] this cause [*Or*, matter] in person: instead of by Mr. E. F., of (*Place of business*), as his solicitor.

If so: who acted by his agent, Mr. L. M., of (*Place of business*).

1989. Petition of course, for the like (*t*).

Proceed as in No. 1983, *ante, to the end of par.* 1.

2. Your petitioner is now desirous to prosecute [*Or*, defend] this cause [*Or*, matter] in person.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute [*Or*, defend] this cause [*Or*, matter] in person: instead of prosecuting [*Or*, defending] the same by the said Mr. E. F. as his solicitor.

If so; who acted by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

1990. Motion paper, by a co-plaintiff, to appoint a solicitor (and agent), for a separate application (*u*).

Formal parts: see ante, No. 53.

To move on behalf of the plaintiff A. B., for leave to appoint Mr. G. H., of (*Place of business*), as his solicitor,

If so: to act by his agent Mr. L. M., of (*Place of business*), for the purpose of making an application respecting (*State what*), in this cause, separate from his co-plaintiffs therein.

1991. Petition of course, for the like (*x*).

Title—and address to the M. R.: see ante, No. 56.

The humble petition of A. B., one of the above named plaintiffs.

Showeth as follows:

1. Your petitioner, and the other co-plaintiffs above named, employ Mr. C. D. as their joint solicitor in this cause.

(*s*) See Dan. Pr. 1724; Braithwaite's Pr. 564.

(*t*) See Dan. Pr. 1724. For orders in like case, see *Young* v. *Bliss*, M. R. 30 Jan. 1860, and *Halford* v. *Brooks*, M. R. 20 Dec. 1869: Rolls' Lib.; and on the application of a married woman, suing by her next friend, see *Moye* v. *Bateman*, cited *ante*, No. 6, n., (*f*); Dan. Pr. 1724.

(*u*) See Dan. Pr. 1724.

(*x*) *Ibid.* For orders in like case, see *Haynes* v. *Barton*, M. R. 18 Jan. 1868, and *Gosnell* v. *Gosnell*, M. R. 31 May, 1870: Rolls' Lib.

If so: who acts by Mr. E. F. as his agent.

2. Your petitioner is now desirous to make an application respecting (*State what*), in this cause, separate and apart from his co-plaintiffs therein, by Mr. G. H., of (*Place of business*), as his solicitor.

If so: to act by his agent, Mr. L. M., of (*Place of business*).

Your petitioner therefore humbly prays, that he may be at liberty to appoint the said Mr. G. H. as his solicitor, for the purpose of making the said separate application.

If so: and that the said Mr. G. H. may act by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

1992.

Motion paper, by a solicitor, to change his agent (*x*).

Formal parts: see ante, No. 53.

To move on behalf of Mr. C. D., the solicitor in this cause [*Or*, matter] for the plaintiff [*or as may be*], for leave to change his agent, by appointing Mr. E. F., of (*Place of business*), as such agent, in lieu of Mr. G. H., of (*Place of business*).

1993.

Petition of course, for the like (*y*).

Title—and address to the M. R.: see ante, No. 56.

The humbie petition of C. D., of (*Place of business*), a solicitor of this honourable Court.

Showeth as follows:

1. The plaintiff [*or as may be*] employs your petitioner as his solicitor in this cause [*Or*, matter]; and your petitioner lately acted therein by Mr. G. H., of (*Place of business*), as his agent.

2. Your petitioner is now desirous to change his said agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his agent in this cause [*Or*, matter], by appointing Mr. E. F., of (*Place of business*), as such agent: in the place and stead of the said Mr. G. H.

And your petitioner will ever pray, &c.

1994.

Petition by a solicitor, properly concerned, for leave to act by an agent (*z*).

Proceed as in No. 1993, *ante*, *to* as follows:

1. The plaintiff [*or as may be*] employs your petitioner as his solicitor in this cause [*Or*, matter].

2. Your petitioner is now desirous to act by an agent.

Your petitioner therefore humbly prays, that he

(*x*) See Dan. Pr. 379, 1723; Braithwaite's Pr. 564.

(*y*) See Dan. Pr. 379, 1723. For order in like case, see *Whiteboase* v. *Cross*, M. R. 1 Dec. 1869, Rolls' Lib.; and on petition of solicitor of a person having liberty to attend proceedings, see *Johnson* v. *Rawlinson*, M. R. 1 Jan. 1867, Rolls' Lib.

(*z*) *Stanford* v. *Roberts*, M. R. 30 July, 1870, Rolls' Lib.

may be at liberty to employ Mr. E. F., of (*Place of business*), as his agent, in the place and stead of your petitioner acting as solicitor properly concerned.

And your petitioner will ever pray, &c.

1995.

Notice of appointment of a solicitor, instead of one deceased—or instead of client acting in person (*a*).

In Chancery.

(*Short title, and reference to the record.*)

Take notice, that I am now concerned as solicitor in this cause [*Or*, matter] for the plaintiff [*or as may be*], in the place and stead of Mr. C. D., now deceased

Or, instead of his acting in person.

Dated this —— day of ——, 187—.

E. F., of (*Place of business*).

To the Clerks of Records and Writs; and to Mr. G. H., the solicitor [*Or*, agent] for the defendant [*or as may be*].

1995a.

Petition of course, to appoint a solicitor, instead of client acting in person (*b*).

Proceed as in No. 1983, *ante, to* as follows:

1. Your petitioner lately prosecuted [*Or*, defended] this cause [*Or*, matter] in person; and he is now desirous to appoint Mr. C. D. of (*Place of business*), to prosecute [*Or*, defend] the same on his behalf.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute [*Or*, defend] this cause [*Or*, matter] by the said Mr. C. D. as his solicitor, instead of in person.

And your petitioner will ever pray, &c.

1996.

Notice of appointment of an agent, instead of one deceased (*c*).

Formal parts: see ante, No. 1995.

Take notice, that I am now appointed agent in this cause [*Or*, matter] for Mr. A. B., of (*Place of business*), the solicitor therein for the plaintiff [*or as may be*]: in the place and stead of Mr. E. F., now deceased.

(*a*) See Dan. Pr. 1724, 1725; Braithwaite's Pr. 564, 565. As to when a notice, without an order to change, is sufficient, see *ib.* For form of notice of change of place of business or residence, or of address for service, see *ante*, No. 8.

(*b*) For orders in like case, see *Miller* v. *Miller*, M. R. 24 April, 1870; *Browne* v. *Rennolls*, M. R. 11 July, 1870; and *Pearce* v. *Dobinson*, M. R. 16 July, 1870, all in Rolls' Lib.; and see Dan. Pr. 1725, n. (*l*).

(*c*) See Dan. Pr. 1724; Braithwaite's Pr. 565.

1997.

Notice by solicitor, that he is concerned for new plaintiffs (*d*).

Formal parts: see ante, No. 1995.

Take notice, that I am now concerned as solicitor in this cause for A. B. and C. D., the present plaintiffs therein [*or as may be*].

1998.

Præcipe for a *subpœna*, to name a solicitor (*e*).

In Chancery.

(*Reference to the record.*)

(*Short title.*) Seal a *subpœna*, on behalf of A. B. (and another—*Or*, others), directed to C. D.: to name a solicitor.

Tested —— day of ——, 187—.

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

1999.

The *subpœna* (*f*).

Victoria (*&c.: see ante*, No. 313).

To (*Insert name*), greeting:

We command you that, within eight days after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do appear in our High Court of Chancery, and name a solicitor for you in a cause wherein —— are complainants, and —— are defendants; and observe what our said Court shall direct in this behalf: upon pain of an attachment issuing against your person, and such other process of contempt as our said Court shall award.

Witness (*&c.: see ante*, No. 313).

ROMILLY, M. R.

2000.

Indorsement thereon (*g*).

By the Court.

To name a solicitor at the instance of the within named A. B. (and another—or others).

(*Name, &c., of solicitor or party issuing the writ: see ante*, No. 4, *or* 7.)

(*d*) See Dan. Pr. 1725; Braithwaite's Pr. 565.

(*e*) See Dan. Pr. 380, 1725; Braithwaite's Pr. 265.

(*f*) See Dan. Pr. 380, 1725; Ord. Sched. E. No. 5; Braithwaite's Pr. 264, 265. The writ must be engrossed on parchment, and stamped with a 5*s.* chancery fee fund stamp: *ante*, No. 1554 (5). As to substituted service of the *subpœna*, see Dan. Pr. 380, 1725; Braithwaite's Pr. 265.

(*g*) See Dan. Pr. 380, 1725; Braithwaite's Pr. 264.

Section III.—Striking off the Roll (*h*).

2001.
Motion paper, by a solicitor, to be struck off the roll (*i*).

In Chancery.
In re A. B., a solicitor of this Court.
To move on behalf of the said A. B., of (*Place of business*), that he may be struck off the roll of solicitors of this Court.
An affidavit in support accompanies.

2002.
Petition of course, for the like (*i*).

In Chancery.
In the matter of A. B., a solicitor of this Court.
To the Right Honourable the Master of the Rolls.
The humble petition of the above named A. B., of (*Place of business*).
Showeth as follows:
1. In —— term, 187—, your petitioner was duly admitted a solicitor of this honourable Court; and he is now on the roll of solicitors thereof.
2. Your petitioner is now desirous to have his name struck off the said roll (*k*).
Your petitioner therefore humbly prays, that he may be struck off the roll of solicitors of this honourable Court.
And your petitioner will ever pray, &c.

2003.
Affidavit in support of motion or petition (*l*).

In Chancery.
In the matter of A. B., a solicitor of this Court.
I, the above named A. B., of (*Place of business*), gentleman, make oath and say, as follows:
1. In —— term, 187—, I was duly admitted a solicitor of this honourable Court.

(*h*) As to striking a solicitor off the roll on his own application, and as to the summary jurisdiction of the Court over solicitors and agents, see Dan. Pr. 1713, *et seq.*; Pulling, 461, *et seq.*; Chitty's Arch. 147, *et seq.*; Seton, 865, 866; 23 & 24 Vic. c. 127, ss. 24, 25. An application under the summary jurisdiction is made by petition: Dan. Pr. 1714. For orders *nisi* and absolute to strike a solicitor off the roll for misconduct, see Seton, 865, Nos. 2, 3; 866, No. 5.

(*i*) See Seton, 866. For order in like case, see *Re Duke*, M. R. 6 May, 1870, Rolls' Lib.; and see Seton, 865, No. 1. The order must, before it is acted upon, be entered with the Registrar of Attorneys, &c.: see 23 & 24 Vic. c. 127, s. 24.

(*k*) It seems there is no occasion to assign, either in the petition or the affidavit in support, any ground for making the application: see *Ex parte Charnock*, 1 W. W. & H. 548; *Ex parte Burrell*, 11 Jur. 1062, B. C.; and Chitty's Forms, 33.

(*l*) See Chitty's Forms, 33.

2. I am now desirous to have my name struck off the roll of solicitors of this honourable Court, for the purpose of my being called to the bar by the honourable Society of ——[*or as may be* (*m*)].

3. No application or other proceeding is now pending in this honourable Court, or elsewhere, against me as such solicitor as aforesaid; and I do not expect or apprehend that any application or proceeding will be made or taken against me as such solicitor as aforesaid.

Sworn (*&c.: see ante*, No. 12).

Section IV.—Delivery and Taxation of Bills of Costs, under 6 & 7 Vic. c. 73 (*n*).

2004.
Motion paper, by solicitor: party chargeable: or third party: for the common order to tax a delivered bill (*o*).

Format parts: see ante, No. 53; *but entitle the motion paper thus:* In Chancery.

In the matter of A. B., one of the solicitors of this Court (*p*).

(*m*) But see *ante*, No. 2002, n. (*k*).

(*n*) See generally, 6 & 7 Vic. c. 73, ss. 37—43; 33 & 34 Vic. c. 28; Dan. Pr. 1726—1756; Morgan & Davey, 304—361; Seton, 828—852. As to the jurisdiction of the Court of Chancery to make an order under the statute, see 6 & 7 Vic. c. 73, s. 37, *et seq.*; Dan. Pr. 1726, *et seq.*; Seton, 832—834; Morgan & Davey, 310. As to when the application is of course, by motion or petition; and when special, by summons: see Dan. Pr. 1734, 1735; Seton, 835—837; Morgan & Davey, 312, 321. As to the form of the order, see Dan. Pr. 1736, 1737; and as to service thereof, see *ib.* 1735. For form of notice of motion to discharge an order of course for irregularity, see *ante*, No. 1733; and as to the grounds of application, see Dan. Pr. 1736; Seton, 837. As to who may apply for taxation, see Dan. Pr. 1743, *et seq.*; Morgan & Davey, 311. As to the taxation of an agent's bill, see Dan. Pr. 1744. As to disputing the retainer, see *ib.* 1745, 1751. As to requiring security for costs from the applicant, see *ib.* 1745; Seton, 835; and for the practice as to giving security for costs, see *ante*, Nos. 73—91, and notes thereto. As to reviving and carrying on a taxation, by and between the representatives of the parties, see Dan. Pr. 1756; and for order in like case, see Seton, 852, No. 3. As to the lien of a solicitor on documents, and on a fund recovered, see Dan. Pr. 1715—1722; and see Seton, 856—860; Morgan & Davey, 390—400. For order for delivery up of documents, on payment of amount of lien, see *Gummoe* v. *Howes*, M. R. at Chambers, 16 Jan. 1864, Reg. Lib. A. 201. As to the power of the Court or Judge to charge property recovered with the payment of costs, see 23 & 24 Vic. c. 127, s. 28; Dan. Pr. 1721; and to order payment of interest on costs, see 23 & 24 Vic. c. 127, s. 27; Dan. Pr. 1243; and as to interest allowable on taxation, see the Attorneys and Solicitors Act, 1870 (33 & 34 Vic. c. 28), s. 17; Dan. Pr. 1755. For the provisions of the latter Act, in general, see Dan. Pr. 1738—1742, 1755.

(*o*) See 6 & 7 Vic. c. 73, ss. 37, 38; Dan. Pr. 1726, 1727, 1729, 1734; and notes to Nos. 2005, 2006, *post*. The common order is usually made on a petition of course at the Rolls.

(*p*) As to the title, see 6 & 7 Vic. c. 73, s. 43; Dan. Pr. 1731, 1735.

To move on behalf of the said A. B., of (*Place of business*),
Or, of C. D., of (*residence and addition of party chargeable, or third party* (*q*)),
for the common order to tax the said A. B.'s bill of fees and disbursements.

See statement within (*r*).

2005. Petition of course, by solicitor, for taxation of his delivered bill (*s*).

In Chancery.

In the matter of A. B., one of the solicitors of this Court (*t*).

To the Right Honourable the Master of the Rolls.

The humble petition of the above named A. B., of (*Place of business* (*u*)).

Showeth as follows:

1. Your petitioner was employed by C. D., of (*residence and addition*), as his solicitor in (*State, shortly, what; as thus:* a certain suit in this Court, in which the said C. D. was plaintiff, and E. F. was defendant, and in other matters.

Or, in certain conveyancing business, and other matters, but not in any Court of Law or Equity—*or as may be* (*x*)).

2. Your petitioner transacted such business; and on the —— day of ——, 187—, caused a bill of his fees, charges, and disbursements for the same (*y*), subscribed with his proper handwriting,

Or, enclosed in, or accompanied by, a letter subscribed with his proper handwriting, referring to such bill (*z*),

to be personally delivered to the said C. D.—*or as may be* (*a*).

(*q*) As to the description of the applicant, see *ante*, No. 55, n. (*t*); *ib.* 155—193; and notes thereto.

(*r*) This statement should be to the effect of the allegations required in a petition of course for a like order; and can be readily framed from such of the forms numbered 2005, 2007, 2009, *post*, as may be applicable to the particular case.

(*s*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1726, 1727, 1729, 1734; Morgan & Davey, 310. For order in like case, against client's executor, see *Re Barret*, M. R. 8 Jan. 1867, Rolls' Lib.

(*t*) As to the title, see 6 & 7 Vic. c. 73, s. 43; Dan. Pr. 1731, 1735.

(*u*) As to an application by the representatives of the solicitor, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1726.

(*x*) For examples of cases within s. 37, see Dan. Pr. App. II., Pt. II.

(*y*) As to the heading and other formal parts of the bill, see Dan. Pr. 1731, 1732; Seton, 835; Morgan & Davey, 308, 310.

(*z*) As to what is a sufficient signature, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1726, 1731; Seton, 834; Morgan & Davey, 305.

(*a*) As to what is a sufficient delivery, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1726, 1733; Seton, 835; Morgan & Davey, 306. As to proof of compliance with the Act, see s. 37; Dan. Pr. 1729; Morgan & Davey, 307.

3. The said C. D. has not paid your petitioner's said bill, nor taken any steps to get the same taxed (*b*).

Your petitioner therefore humbly prays, that it may be referred to the proper Taxing Master of this Court to tax and settle the said bill: with the usual directions.

And your petitioner will ever pray, &c.

2006.

Order on petition of solicitor, to tax his delivered bill (*c*).

Date—and Title.

Upon the humble petition of the said A. B. this day preferred unto the Right Honourable the Master of the Rolls, It was alleged that (*Recite the allegations in the petition*):

(1). Direction to tax (*d*).

It was therefore prayed, and it is accordingly ordered, that it be referred to the proper Taxing Master of this Court to tax and settle the said bill; and that the petitioner, and also the said C. D., do produce before the said Master, upon oath, as he shall direct, all books, papers and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined touching the same matters, or any of them, as the said Master shall direct.

(2). Cash account (*e*).

And it is ordered that the petitioner do give credit for all sums of money by him received of, or on account of, the said C. D.; and that he be at liberty to charge all sums of money paid by him to or on account of the said C. D.

(3). Costs of reference (*f*).

And it is ordered—in case the said C. D. shall attend upon such taxation—that if such bill when taxed be less by a sixth part than the said bill so delivered, the said Master do tax the said C. D. his costs of this reference; and if such bill when taxed shall not be less by a sixth part than the said bill so delivered, the said Master do tax the petitioner his costs of the said reference.

(*b*) For forms of petition for a taxation, by the party chargeable, see *post*, Nos. 2007, 2009.

(*c*) See Dan. Pr. 1727. For order in like case, see Seton, 829, No. 3; and for order of course to tax bill delivered by deceased solicitor's representatives, see Seton, 850, No. 1. As to obtaining leave to sue within a month of the delivery, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1729.

(*d*) For the principles of taxation, see Dan. Pr. 1298—1306. For the method of taxation, see Dan. Pr. 1307—1319; and *ante*, Nos. 1574—1584, and *post*, No. 2020, and notes thereto. As to proceeding *ex parte* with the taxation, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727.

(*e*) As to what items of disbursement may be charged in the bill, see Dan. Pr. 1752—1754; Morgan & Davey, 342, 359. As to special directions, see Dan. Pr. 1751; Seton, 838, 841.

(*f*) As to the costs of the reference, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727, 1728, 1754; Seton, 838; Morgan & Davey, 358.

And it is ordered that the said Master do certify the amount due from the said C. D. to the petitioner, or from the petitioner to the said C. D., as the case may be: having regard to the costs of such reference (if taxed as aforesaid), and any sum or sums of money which may have been so received or paid as aforesaid. (4). Balance to be certified (*g*).

And in case the said C. D. shall pay to the petitioner such sum as may be certified to be due to him, without further order: or in case the said Master shall certify that there is nothing due to the petitioner, or that he has been overpaid: it is ordered that the petitioner do deliver to the said C. D., upon oath, all deeds, books, papers, and writings in his custody or power belonging to the said C. D. (5). Delivery up of deeds, &c., on payment (*h*).

And it is ordered that no proceedings at law or otherwise be taken by the petitioner against the said C. D. in respect of the said bill, pending such reference. (6). Proceedings stayed, pending reference (*i*).

And it is ordered that a copy of this order be personally served on the said C. D. one week at the least before any warrant is taken out for the taxation of the said bill. (7). Service of order (*k*).

2007.

Petition of course, by party chargeable, to tax a delivered bill, before action brought (*l*).

Title, and address to the M. R.: as in No. 2005, *ante.*

The humble petition of C. D., of (*residence and addition* (*m*)).

Showeth as follows:

1. Your petitioner employed the above named A. B., of (*Place of business*), as his solicitor in (*State, shortly, what: see ante,* No. 2005).

2. The said A. B., on the —— day of ——, 187—, delivered to your petitioner his bill of fees, charges, and disbursements: which, as your petitioner is advised, contains many unreasonable and extravagant charges.

3. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill (*n*).

Your petitioner therefore humbly prays, that it may

(*g*) As to certifying the balance and special circumstances, see 6 & 7 Vic. c. 73, ss. 37, 43; Dan. Pr. 1728.

(*h*) As to enforcing the execution of the order, see 6 & 7 Vic. c. 73, s. 43; Dan. Pr. 1755; Seton, 837; and *ante,* No. 922, *et seq.,* and notes thereto.

(*i*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727.

(*k*) As to service, generally, and substituted service, see Dan. Pr. 1735.

(*l*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1726, 1727; and notes to No. 2005, *ante.*

(*m*) See *ante,* No. 2004, n. (*q*).

(*n*) As to the submission to pay, see Dan. Pr. 1735.

be referred to the proper Taxing Master of this Court to tax and settle the said bill: with all usual directions. And that no proceedings at law may be commenced against your petitioner in respect of the said bill, pending such reference.

And your petitioner will ever pray, &c.

2008.

Order thereon (*o*).

Formal parts: as in No. 2006, *ante*.

It was therefore prayed, and it is accordingly ordered, that it be referred to the proper Taxing Master of this Court to tax and settle the said bill; and that the petitioner, and also the said solicitor, do produce before the said Master, upon oath, as he shall direct, all books, papers and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined touching the same matters, or any of them, as the said Master shall direct.

(1). Direction to tax (*p*).

(2). Cash account (*q*).

And it is ordered that the said solicitor do give credit for all sums of money by him received of, or on account of, the petitioner, and that he be at liberty to charge all sums of money paid by him to or on account of the petitioner.

(3). Costs of reference (*r*).

And it is ordered that if such bill when taxed be less by a sixth part than the said bill so delivered, the said Master do tax the petitioner his costs of this reference; and if such bill when taxed shall not be less by a sixth part than the said bill so delivered, the said Master do tax the said solicitor his costs of such reference.

(4). Balance to be certified (*s*).

And it is ordered that the said Master do certify the amount due from the petitioner to the said solicitor, or from him to the petitioner, as the case may be: having regard to the costs of such reference, so to be taxed as aforesaid, and any sum or sums of money which may have been so received or paid as aforesaid.

(5). Direction to pay (*t*).

And it is ordered that the amount so to be certified be paid, within twenty-one days after service of this order, and of the

(*o*) See Dan. Pr. 1736; and notes to No. 2006, *ante*. For order in like case, see *Re Briant*, M. R. 1 Jan. 1867, Rolls' Lib.; and for order, on petition of an executrix, to tax bill for business done for her testator and herself, see *Re Noton*, M. R. 4 Dec. 1869, Rolls' Lib.; and see Seton, 828, No. 1; 829, No. 2.

(*p*) See *ante*, No. 2006, n. (*d*).

(*q*) *Ibid.*, n. (*e*).

(*r*) *Ibid.*, n. (*f*).

(*s*) *Ibid.*, n. (*g*).

(*t*) For order for substituted service of the order to tax, and Taxing Master's certificate of taxation, in like case, see *Re Rush*, M. R. 18 Dec. 1869, Reg. Lib. B. 3024. In S. C. an attachment was issued on 17 Jan. 1870: Reg. Lib. B. 32; and was returned *non est inventus*; whereupon a sequestration was issued on 25 Jan. 1870, under an order dated 22 Jan. 1870: Reg. Lib. B. 74. For order for

Taxing Master's certificate to be made in pursuance thereof: unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate, by the party liable to pay such amount.

(6). Delivery up of deeds, &c. (*u*).

And it is ordered that upon payment by the petitioner to the said solicitor of what may be certified to be due to him as aforesaid: or in case it shall appear that there is nothing due to him: he the said solicitor do deliver to the petitioner, upon oath, all deeds, books, papers, and writings in his custody or power belonging to the petitioner.

(7). Proceedings stayed, pending reference (*x*).

And it is ordered that no proceedings at Law or otherwise be commenced against the petitioner in respect of the said bill, pending such reference.

If a month from the delivery of the bill has elapsed, add (*y*)*:* but the said Master is to make his certificate in a month (unless the said Master shall certify that further time is necessary to enable him to make his certificate): or this order is to be of no effect.

2009.

Petition of course, by party chargeable, to tax a delivered bill, after action brought (*z*).

Proceed as in No. 2007, *ante, to the end of par.* 2; *and continue thus:*

3. The said A. B. has commenced an action against your petitioner in Her Majesty's Court of Queen's Bench [*or as may be*], to recover the amount of the said bill; and your petitioner has appeared thereto (*State, shortly, the subsequent proceedings, if any*).

4. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill.

Your petitioner therefore humbly prays, that it may be referred to the proper Taxing Master of this Court to tax and settle the said bill: with all usual directions. And that all further proceedings at Law may be stayed against your petitioner in respect of the said bill, pending such reference.

And your petitioner will ever pray, &c.

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sale of the personal property sequestered thereunder, see *ante*, No. 956, n. (*q*); and for petition and order for sale of lands sequestered thereunder, see *ante*, Nos. 915, 916.

(*u*) See *ante*, No. 2006, n. (*h*).

(*x*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727.

(*y*) See Seton, 829, No. 2; Dan. Pr. 1737.

(*z*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727; and notes to Nos. 2005, 2007, *ante*.

2010.

Order thereon (*a*).

Formal parts: see ante, No. 2006.

It was therefore prayed, and it is accordingly ordered, that it be referred (*Direction to tax bill, and clause as to the cash account: as in* No. 2008, *ante*).

Costs of the action.

And in case it shall appear that there is anything due to the said solicitor, it is ordered that the said Master do tax the said solicitor his costs of the said action at law; and that such costs be added to the amount which shall be so found due.

Costs of reference. Balance.

And it is ordered that (*Clauses as to costs of reference, and ultimate balance: as in* No. 2008, *ante*).

Where special circumstances certified.

And it is ordered that the amount so to be certified be paid accordingly: unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate, by the party liable to pay such amount.

Delivery up of deeds, &c.

And it is ordered that (*Clause as to delivery up of deeds, &c.: as in* No. 2008, *ante*).

Action stayed (*b*).

And it is ordered that all further proceedings at Law against the petitioner in respect of the said bill be stayed, pending such reference; but the petitioner is to carry this order, and the said bill of costs, into the office of the said Master on or before the —— day of ——; and, in default thereof, the said solicitor is to be at liberty to proceed with the said action at Law, as if this order had not been made.

Prosecution of order.

And it is ordered that either party be at liberty to prosecute this order; and the said Master is to make his certificate in a fortnight (unless the said Master shall certify that further time is necessary to enable him to make his certificate): or this order is to be of no effect.

Payment, where no special circumstance.

Writs of execution (*c*).

And in case the said Master shall not state any special circumstance in his said certificate, and shall certify that there is anything due from the petitioner to the said solicitor, it is ordered that the amount so certified be paid by the petitioner to the said solicitor; and in default of such payment being made, the said solicitor is to be at liberty, at any time after two days from the filing of the said Master's certificate (without service of this order, or of the said certificate), to sue out execution against the petitioner by *fieri facias*, writ of *elegit*, or otherwise, for the amount which may be so certified to be due as aforesaid.

(*a*) See Dan. Pr. 1736; and notes to Nos. 2006, 2008, *ante*. For order in like case, see Seton, 841, No. 1.

(*b*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727.

(*c*) As to writs of *fieri facias* and *elegit*, for payment of costs, see *ante*, Nos. 1602—1605—1608, and notes thereto; and in other cases, *ib.* No. 965, *et seq.*; and as to execution, generally, of a decree or order, *ib.* No. 922, *et seq.*

2011.
Motion paper, by party chargeable, for delivery of bill, and taxation (*d*).

Formal parts: see ante, No. 2004.

To move on behalf of C. D., of (*residence and addition*), for the common order for delivery by the said A. B. of the bill of fees, charges and disbursements claimed by him against the said C. D.; and for taxation thereof: on the usual submission to pay.

2012.
Petition of course, for the like (*d*).

Proceed as in No. 2007, *ante, to end of par.* 1; *and continue thus:*

2. Your petitioner is desirous of obtaining the papers in the possession of the said A. B. belonging to your petitioner; but the said A. B. refuses to deliver up the same until his bill of costs be paid.

3. The said A. B., although applied to, has not delivered his bill of costs against your petitioner.

4. Your petitioner submits to pay to the said A. B. what shall appear to be due to him in respect of the said bill.

Your petitioner therefore humbly prays, that the said A. B. may, within a fortnight after notice hereof, deliver to your petitioner a bill of all such fees, charges and disbursements as he claims to be due to him from your petitioner; and that it may be referred to the proper Taxing Master of this Court to tax and settle the said bill: with all usual directions.

And your petitioner will ever pray, &c.

2013.
Order thereon (*e*).

Formal parts: see ante, No. 2006.

It was therefore prayed, and it is accordingly ordered, that the said solicitor do, within a fortnight after notice hereof (*f*), deliver to the petitioner a bill of fees and disbursements in all suits, causes, and other matters of business in which he has been employed as the attorney or solicitor for the petitioner. And it is ordered that it be referred (*Continue as in* No. 2008, *ante, to the end*).

(*d*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1728, 1734; and notes to No. 2007, *ante*.

(*e*) See Dan. Pr. 1736. For order in like case on petition, see *Re Allen*, M. R. 11 Jan. 1867, Rolls' Lib.; and see *Re Rush*, M. R. 16 Jan. 1869, Rolls' Lib.; see also Seton, 831, No. 1. For order for delivery to client's representative, and taxation, see Seton, 851, No. 2. As to service of the order, see Dan. Pr. 1735; Morgan & Davey, 307. For form of indorsement, see *ante*, No. 922.

(*f*) As to enforcing the delivery, see Dan. Pr. 1734; Morgan & Davey, 307. For attachment in like case, see *Re Mayhew*, 24 Mar. 1864, Reg. Lib. B. 590. For form of summons for further time to deliver bill, see *post*, No. 2019.

2014.

Petition of course, by a third party, for taxation of bill (*g*).

Title—and address to the M. R.: as in No. 2005, *ante.*

The humble petition of E. F., of (*residence and addition*).

Showeth as follows:

1. *Show how the liability to pay was incurred* (*h*); *as thus:* The above named A. B. was employed by C. D., as mortgagee, in certain business relating to the payment off, or transfer, of a mortgage created by your petitioner in favour of the said C. D., of certain property belonging to your petitioner, the mortgagor.

2. *State delivery of bill; as thus:* The said A. B., on or about the —— day of ——, 187—, delivered unto your petitioner his bill of fees and disbursements relating to the said business: which your petitioner is liable to pay; and your petitioner is advised that the said bill contains many unreasonable and extravagant charges.

3. Your petitioner submits (*Continue as in* No. 2007, *ante, to the end of that Form*).

2015.

Order thereon (*i*).

Formal parts: see ante, No. 2006.

It was therefore prayed, and it is accordingly ordered, that it be referred (*Direction to tax bill, and costs of reference, and for production of books, &c.: as in* No. 2008, *ante*).

And it is ordered that the said Master do certify the amount due in respect of the said bill: having regard to the costs of such reference so to be taxed as aforesaid.

And it is ordered that the amount so to be certified (*Direction to pay: as in* No. 2008, *ante*).

And it is ordered that no proceedings (*Conclude as in* No. 2008, *ante*).

2016.

Summons, by a party beneficially interested, to tax a delivered bill (*l*).

In Chancery.

In the matter of A. B., one of the solicitors of this Court (*k*).

(*g*) See 6 & 7 Vic. c. 73, s. 38; Dan. Pr. 1729, 1744; Morgan & Davey, 331—337; and notes to No. 2007, *ante.* For form of summons for taxation after a year, or after payment, see *post,* Nos. 2017, 2018. For form of petition of course for taxation of bill, under the Lands Clauses Consolidation Act, 1845, sec. 83, see *post,* Chap. XLV., sec. 7. As to obtaining a copy of the bill, see 6 & 7 Vic. c. 73, s. 40; Dan. Pr. 1730.

(*h*) For illustrations of cases where third parties may apply for taxation, see Dan. Pr. Appx. II., Pt. II.

(*i*) See Dan. Pr. 1729, 1744. For orders in like case, see *Re Wools,* M. R. 3 Jan. 1867, Rolls' Lib.; *Re Cook,* M. R. 17 Dec. 1869, Rolls' Lib.; see also Seton, 847, No. 1.

(*k*) As to the title, see 6 & 7 Vic. c. 73, s. 43; Dan. Pr. 1735.

(*l*) See 6 & 7 Vic. c. 73, s. 39; Dan. Pr. 1729, 1730, 1735. For order on

Let (*&c.: Continue as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of E. F., of (*residence and addition* (*m*)).

1. That: on the submission of the applicant to pay what, if anything, shall appear to be due to the above named A. B., of (*Place of business*), upon taxation of his bill hereinafter mentioned: it may be referred to the proper Taxing Master of this Court to tax and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered by the said A. B., to C. D., as the trustee [*Or*, executor] of the will [*Or*, administrator of the effects] of G. H. deceased [*or as may be*]; and which the said C. D. has paid [*Or*, claims to be entitled to pay] out of property in which the applicant is interested.

2. That all usual and proper directions may be given, touching such taxation.

3. That the costs of this application, and of the said reference, may be dealt with, in such manner as the Judge shall think fit to direct.

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

2017.

Summons, for the taxation of an unpaid bill, after a year from delivery (*o*).

Formal parts: see ante, No. 2016.

on the hearing of an application on the part of C. D., of (*residence and addition*):

1. That: upon the submission of the applicant to pay to the above named A. B., of (*Place of business*), what shall appear to be due to him upon the taxation of his bill hereinafter mentioned: it may be referred to the proper Taxing Master of this Court to tax

petition of a legatee, in like case, and for delivery of further bill, see Seton, 848, No. 2. As to obtaining a copy of the bill, see 6 & 7 Vic. c. 73, s. 40; Dan. Pr. 1730; and for order for delivery of such copy, see Seton, 848, No. 3. As to when a special application by summons for the taxation of a bill of costs is necessary, see Dan. Pr. 1735; Seton, 849; Morgan & Davey, 318—331; and see Ord. 17 April, 1867, rr. 2—4: Law Rep. 2 Ch. xv. An application at Chambers for the taxation of a bill, whether before or after payment, is made by an originating summons: Dan. Pr. 1735: for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*m*) As to the description of the applicant, see *ante*, No. 55, n. (*t*); *ib.* 155—193; and notes thereto.

(*o*) See 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727, 1728, 1735. For order in like case, see *Re Wilson*, M. R. at Chambers, 24 Nov. 1865, Reg. Lib. B. 2398 (by consent). As to taxation a year after delivery, see *ib.* 1746, 1747; Morgan & Davey, 318—321; and notes to No. 2016, *ante*. For forms of special orders: to tax particular items only, see Seton, 830, No. 4; to tax, with leave to question retainer, *ib.* No. 5; to deliver and tax, subject to special agreement, *ib.* 831, No. 2; and to tax, on giving judgment, with stay of execution, *ib.* 842, No. 2.

and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered on or about the —— day of ——, 187—, to the applicant by the said A. B., as his solicitor: with all usual directions.

2. That no proceedings at law may be commenced against the applicant in respect of the said bill, pending such reference.

2018.

Summons, for the taxation of a paid bill (*p*).

Formal parts: see ante, No. 2016.

on the hearing of an application on the part of C. D., of (*residence and addition*):

1. That it may be referred to the proper Taxing Master of this Court to tax and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered by the above named A. B., of (*Place of business*), to the applicant, and paid by the applicant to the said A. B., on or about the —— day of ——, 187—[*or as may be*].

2. That the applicant and the said A. B., respectively, may be directed to produce before the said Master (*Continue as in ante*, No. 2008, *par.* 1, *to the end of par.* 2).

4. That in case it shall appear that the said bill is overpaid, the said Master may be directed to certify the amount overpaid; and that in such case the said A. B. may be ordered, within twenty-one days after service of the order to be made hereon, and of the said Master's certificate to be made in pursuance thereof, to repay to the applicant what shall be certified to be the amount so overpaid by him.

5. That the said Master may be at liberty to state any circumstance specially, at the request of either party, as he shall think fit.

6. That the costs of this application, and of the said reference, may be dealt with in such manner as the Judge shall think fit to direct.

2019.

Summons, for further time to deliver bill of costs, pursuant to order (*q*).

Formal parts: see ante, No. 60.

on the part of the above named A. B., that the time limited for the applicant to deliver his bill of fees, charges, and disbursements, pursuant to the order dated the —— day of ——, 187—, may be enlarged until the —— day of ——, 187—.

(*p*) See 6 & 7 Vic. c. 73, s. 41; Dan. Pr. 1731, 1735. For order in like case, see Seton, 843. As to when an order for taxation after payment will be made, and what amounts to payment, see Dan. Pr. 1747—1750; Seton, 844—847; Morgan & Davey, 321—331.

(*q*) See Dan. Pr. 1756; and *ante*, No. 2013. For orders in like case, see *Re Jones*, V. C. S. at Chambers, 24 Aug 1866, Reg. Lib. A. 2148; *Re Hind*,

2020. Method of taxation (*r*).

See *ante*, for the following Forms: which can be readily adapted:

Certificates verifying copy order—of no previous reference—and of name of rotation Master: Nos. 1576—1578.

Warrants on leaving and to tax, and affidavit of service: Nos. 1579—1581.

Statement of objections: No. 1582.

Warrant to proceed thereon: No. 1583.

Summons to review taxation: No. 1584.

M. R. at Chambers, 3 Aug. 1870, Reg. Lib. A. 2172. As to the costs of the application, see Dan. Pr. 1756.

(*r*) See Dan. Pr. 1725; and notes to Nos. 1574—1584, *ante*. As to the costs of the reference, and the power of the Taxing-Master to state special circumstances, see 6 & 7 Vic. c. 73, s. 37; Dan. Pr. 1727, 1728, 1754; Seton, 838; Morgan & Davey, 358. As to calling in officer of another court to assist, see 6 & 7 Vic. c. 73, s. 42; Dan. Pr. 1314, 1731; and see *ante*, No. 1305. As to the conclusiveness of the Taxing-Master's certificate, on a taxation under the Act, see 6 & 7 Vic. c. 73, s. 43; Dan. Pr. 1731.

CHAPTER XLV.

THE STATUTORY JURISDICTION OF THE COURT (*a*).

Section I.—Titles of Petitions, under Acts of Parliament.

2021. Directions of Lord Lyndhurst, as to the titles of petitions presented under Acts of Parliament (*b*).

In all cases where a petition is presented under the authority of an Act of Parliament to the Lord Chancellor, the petition must be entitled in the matter of that Act, and in a substantial matter also (*c*) : (1. 2) If it be a railway or other local Act, and under its powers a portion of the estate of any testator or intestate has been taken, the petition must be entitled in the matter of the estate of such testator or intestate ; Or (3) If property settled by any deed of settlement, then in the matter of such settlement ; Or (4) if land belonging to a rector, vicar, or corporate body, then it must be entitled, *Ex parte* the rector, vicar, or corporate body, as the case may be, and in the matter of the said Act ; (5) In the case of legacies paid into Court under the Act 36 Geo. III. c. 52, and sought to be paid out, petitions may be entitled in the way the fund stands in the Accountant-General's books ; (6) Petitions under private Acts of Parliament may be entitled in the Act alone.

Examples :

1. In the matter of the estate of George Woolley, deceased ; and in the matter of the South Devon Railway Act, 1844.
2. In the matter of the settled estates of A. B., deceased ; (*and in the particular Act*).
3. In the matter of the settlement of John Jarvis and wife ; (*and in the particular Act*).
4. *Ex parte* the Rector of Woolwich ; (*and in the particular Act*).

(*a*) See Dan. Pr. 1757, *et seq.*

(*b*) 2nd Rep. Eng. & Ir. Com. App. 122; and see Dan. Pr. 1758. For other examples of titles in like case, see the title of the particular Act in the Index, *post*.

(*c*) In practice, the substantial matter is usually and more conveniently placed before the title of the Act : as in the examples given.

5. In the matter of John Greaves, an infant legatee; and in the matter of the 36 Geo. III. c. 52, entitled "An Act," *&c.*
6. In the matter of an Act for empowering the trustees of the estates of A. B., deceased, to grant leases, and for other purposes.

Section II.—Statutes relating to Charities (*d*).

1. *Generally.*

2022. Regulations and instructions concerning applications, under "The Charitable Trusts Act, 1853," for an order or certificate of the Board of Charity Commissioners, authorising the institution of any suit or other proceeding before any Court or Judge (*e*).

1. Any person applying for an order or certificate of the Board authorising the institution of any suit or other proceeding before any Court or Judge, should transmit to the Board a notice and statement in writing, setting forth whether or not he is a trustee or person administering or claiming to administer, or interested in the charity, or an inhabitant of the parish or place within which the charity is administered or applied; the amount of the gross annual income of the charity; and all the other material facts and circumstances of the case; and explaining the nature and objects of the proposed suit or other proceeding.

2. The facts and circumstances should be stated in numbered paragraphs, as far as conveniently may be.

3. Where the object of the proposed proceedings is the removal of trustees, their names, descriptions, and residences, and the reasons for their proposed removal should be stated.

4. The names, descriptions, and residences of the trustees proposed to be appointed should also be stated.

5. Where the object of the proposed proceeding is a new scheme, the notice and statement should contain information as to the past administration of the charity, and its results, and the nature and provisions of the proposed scheme.

(*d*) See Dan. Pr. 1759—1784; and see Shelford on Mortmain; Francis' Law of Charities; Finlason's Charitable Trusts; Tudor's Charitable Trusts; L. C. Conv. 909—914. As to the Grammar School Act (3 & 4 Vic. c. 77), see Dan. Pr. 1778—1780. As to the Church Building Acts Amendment Act (8 & 9 Vic. c. 70), see Dan. Pr. 1780—1781; and see 18 & 19 Vic. c. 124, ss. 10, 11. For forms of orders directing accounts and inquiries as to charities, see Seton, 342, *et seq.*; and after the result thereof is certified, *ib.* 347, *et seq.* As to costs in charity cases, see Dan. Pr. 17, 18, 1296, 1300; Seton, 350, 351, 363; Morgan & Davey, 138, *et seq.* As to the taxation, at the instance of the Charity Commissioners, of costs on behalf of a charity, or its trustees, see 18 & 19 Vic. c. 124, s. 40; Dan. Pr. 1756; and see *ante*, No. 2004, *et seq.*

(*e*) For the cases in which the order or certificate of the Charity Commissioners must be obtained before any legal proceeding is taken concerning a charity, see Charitable Trusts Act, 1853 (16 & 17 Vic. c. 137), ss. 17, 18; Dan. Pr. 1759—1760; and as to what is a charitable object, see Dan. Pr. 1760—1761.

6. In proposing schemes, care should be taken to deviate as little as possible from the original purposes and intentions of the founder.

7. The Board may require the statement to be explained and altered, in point of form, in such manner and as often as may be thought fit.

8. The Board may also require the statement to be verified by statutory declaration or otherwise.

9. Where the proposed proceeding is to be taken under the special jurisdiction created by the Act, for the establishment or alteration of a scheme, or the appointment or removal of any trustee, notice must be given in the mode which will be directed by the Board.

10. When the Board shall have been satisfied that the proposed proceeding is proper, and that any required notice has been duly given, the requisite order or certificate will be issued to the applicant, or to such other person as may be approved.

2023.

Application for the order or certificate of the Charity Commissioners (*f*).

To the Charity Commissioners for England and Wales.

In the matter of the charity called (*Insert the usual name or designation of the charity, and the name of the parish, township or place, for the benefit whereof the charity was founded, or in which it is administered*), in the county of——.

The undersigned, being (*The applicant should here state whether or not he is trustee, or person administering or claiming to administer, or interested in the charity, or an inhabitant of the parish or place within which the charity is administered or applicable*), submits the following notice and statement :—

1. (*State here concisely, and as far as conveniently may be, in numbered paragraphs, all the material facts and circumstances of the case.*)

Under the foregoing circumstances, the undersigned is desirous of instituting proceedings for effecting the following objects ; that is to say :—

1st. (*State here, as far as conveniently may be, in numbered paragraphs, the specific objects for which proceedings are proposed to be taken*).

The undersigned accordingly requests the Board to issue an order and certificate, authorising him to make an application to (*Describe the Court or Judge*), for effecting the above objects.

I declare that the above statement is in all respects true, according to my information and belief.

Dated this —— day of ——, 187—.

(*The applicant should here sign his name: adding his profession or occupation, and residence*).

(*f*) See *ante*, No. 2022, n. (*e*).

2. *Sir Samuel Romilly's Act* (*g*).

2024. Petition under the Act, for leave to sell, grant leases, and exchange charity lands (*h*).

In Chancery.

In the matter of Frances Ashton's Charity; and of the 52nd Geo. III., chapter 101, intituled "An Act to provide a summary remedy, in cases of abuses of trusts created for charitable purposes."

To the Right Honourable the Master of the Rolls (*i*).

The humble petition of T. H., esquire, the Right Honourable Sir E. R., knight, and Sir R. H. I., baronet, M.P.

Showeth as follows:

1. Your petitioners are three of the trustees of a certain charity founded by the will of F. A., dated, *&c.*, called "The Charity for Poor Clergymen and Poor Clergymen's Widows;" and are also trustees of a charity founded by the same will, called "The Almshouse Charity."

[2. Statement of establishment of a scheme for the management of the charities.]

3. Under, and in accordance with, such scheme, the said charities have been since administered; and both the said charities are comprised in one scheme: although the trustees thereof are different.

4. The real estates belonging to the said charities are situate near the towns of D. and L., in the county of B.; and from various causes, but more especially the very large increase of the population of the said towns, and the increased facility of communication with the metropolis by means of railways, certain parts of the charity estates are most favourably situate for building purposes; and, if sold in small portions, or let on building leases, it would tend greatly to the advantage of the charities, and the increase of the income thereof.

5. Your petitioners lately instructed their surveyors, Messrs. C. & Co., to survey the charity lands, with a view to ascertain whether some parts of the same might not be more advantageously disposed of than by being let for agricultural purposes; and Mr. H. C., one of the members of the said firm, made a report to your petitioners, dated, *&c.;* which was as follows: (*Setting it out*).

(*g*) 52 Geo. III. c. 101; Dan. Pr. 1761—1766; and see Charitable Trusts Act, 1853 (16 & 17 Vic. c. 137), s. 43.

(*h*) *Re Ashton Charities*, M. R. 2 July, 1853: S. C. 22 Beav. 288; Dan. Pr. 1763. For other forms of petitions under this Act, see Francis' Law of Charities, 242; Barry's Stat. Jur. 316.

(*i*) As to the address of a petition under this Act, see Dan. Pr. 1761, 1763. As to who may petition, see *ib.* 1763; as to the persons to be served with the petition, see *ib.* 1764; as to appeals from orders under the Act, see *ib.*; and *ante*, No. 1609, *et seq.*, and notes thereto; and for the practice, generally, as to petitions, see Dan. Pr. 1451—1461; and *ante*, No. 1742, *et seq.*, and notes thereto.

6. The said Messrs. C. & Co. have made another report to your petitioners; as follows: (*Setting it out*).

7. The said reports refer to a map, in the possession of your petitioners, of the whole of the charity estates and premises.

Your petitioners therefore humbly pray, that they may be at liberty to enter into contracts, subject to the approbation of this Court, for the sale, letting on building leases, and exchange, of such parts of the said charity estates as this Court may approve of; and that they may be at liberty, from time to time, to submit to the approbation of this Court such contracts as they may enter into; and, on the approval thereof by this Court, to execute such deeds as may be necessary for carrying the same into execution; and that the monies to be received by them may be invested, and held by them upon the same trusts as the lands in respect of which they were received were held; and that the dividends thereof may be applied accordingly.

Or that (*Concluding as in* No. 57, *ante*).

T. H.
E. R.
R. H. I.

Attestation (*j*).

Signed by the petitioners T. H., E. R., and Sir R. H. I., in the presence of

J. S.,
Solicitor for the petitioners, in the matter of this petition.

2025.

Certificate of counsel, that petition is proper to be sanctioned (*k*).

I hereby certify, that this petition is proper for the sanction of her Majesty's Attorney-General.

(*Signature of counsel.*)
——, 187—.

2026.

Certificate of petitioner's solicitor, as to competency to pay costs (*k*).

I hereby certify, that the petitioners are competent to pay all costs which may be incurred in the matter of this petition. Dated this —— day of——, 187—.

J. S.

2027.

Allowance of the Attorney-General (*k*).

This petition has been submitted to me; and I hereby allow the same, and humbly certify that it is proper to be heard before your lordship: if your lordship should think fit.

(*Date.*)

(*Signature of Attorney-General.*)

(*j*) See Dan. Pr. 1763.

(*k*) *Ibid.* As to adjournments of petitions to Chambers, see generally, No.

2028. Appointment of trustees of a charity (*l*).

See the following Forms, *ante*: which can be readily adapted: Affidavit of eligibility of proposed trustees: No. 1353. Their consent to act: No. 1354. Affidavit verifying their signatures thereto: No. 1355.

2029. Formal parts of a scheme (*m*).

In Chancery.

(*Title.*)

(Proposed) Scheme for the regulation and management of the above mentioned charity, and the estates, funds and property thereof [*or as may be*].

1.
2. } (*Set out the various clauses, in numbered paragraphs.*)
3.

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3. *The Charitable Trusts Acts*, 1853 *to* 1869 (*n*).

2030. Summons for relief, under the Acts (*o*).

In Chancery.

In the matter of (*Describe the charity: according to its designation in the heading of the Charity Commissioners'*

1463 n. (*r*), *ante*; and for the practice as to proceedings in Chambers, under this Act, see Dan. Pr. 1764—1765; and see *ante*, No. 2022, n. (*d*). For form of summons to proceed under an order, see *ante*, No. 1226; and on a petition adjourned to Chambers, see *ante*, No. 1463.

(*l*) See Dan. Pr. 1765; Seton, 361, *et seq.*; and notes to Nos. 1353—1355, *ante*.

(*m*) See Dan. Pr. 1764, 1765. As to schemes, see Seton, 360—362; and see the Endowed Schools Act, 1863 (32 & 33 Vic. c. 56), s. 52; Dan. Pr. 1765, n. (*r*). For the practice as to settling schemes at Chambers, see Dan. Pr. 1765. For forms of schemes, see Francis' Law of Charities, 233—242. For forms of orders approving schemes, see *Attorney-General* v. *Dean, &c., of Christ Church, Oxford*, V. C. S. at Chambers, 16 Nov. 1866, Reg. Lib. A. 2695; and Seton, 347.

(*n*) 16 & 17 Vic. c. 137; 18 & 19 Vic. c. 124; 23 & 24 Vic. c. 136; 25 & 26 Vic. c. 112; 32 & 33 Vic. c. 110; Ord. XLI. 10—13; Dan. Pr. 1766—1778. For a collection of orders under these Acts, with notes, see Seton, 783, *et seq.*; and see *ib.* 347, *et seq.* As to vesting real estate in the Official Trustee of Charity Lands, see 16 & 17 Vic. c. 137, s 48, as amended by 18 & 19 Vic. c. 124, s. 15; Dan. Pr. 1770. For forms of orders in like case, see Seton, 349, No. 8; 783, No. 3. As to vesting stock or securities in the Official Trustees of Charitable Funds, see 16 & 17 Vic. c. 137, s. 51; 18 & 19 Vic. c. 124, ss. 12, 18; 23 & 24 Vic. c. 136, s. 12; Dan. Pr. 1771. For forms of orders in like case, see Seton, 784, *et seq.* As to the powers of the Court of Chancery to enforce orders of the Commissioners, and as to making their awards rules of that Court, see Dan. Pr. 1775, 1776. As to the fees and costs under these Acts, see Ord. XLI. 11, 12; Dan. Pr. 1771. For tables of fees, see *ante*, Nos. 1552—1554.

(*o*) See Dan. Pr. 1768. An originating summons is necessary: for the

order or certificate (*p*) : *see ante*, Nos. 2022, 2023 ; *and add*) ; and of the Charitable Trusts Acts, 1853 *to* 1869.
(*Add any other special Act conferring jurisdiction in the particular case ; as :* and of the Trustee Act, 1850.)

Let (*&c.: Continue as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of (*Set out the names of the applicants : as in the Commissioners' order or certificate; and add their places of residence and addition*) : in the order or certificate of the Board of Charity Commissioners for England and Wales, dated the —— day of ——, 187—, respectively named (*p*) : that (*State the precise object of the application : as in the order or certificate ; and add, if desired, a clause as to raising and paying the costs of, and incident to, the application*).

Dated (*&c.: Conclude as in* No. 1123, *ante : including the foot note*).

2031.

Certificate, verifying copy of the Commissioners' order or certificate, for Chambers (*q*).

We [*Or*, I] certify, that the above is a true copy of the original order or certificate of the Board of Charity Commissioners for England and Wales.

Dated this —— day of ——, 187—.

(*Add name, &c., of solicitor or party leaving the copy : see ante*, No. 4, *or* 7.)

2032.

Authority of applicants, to use their names (*r*).

(*Name of Charity.*)

We, A. B., of (*residence and addition*), and C. D., of *&c.*, authorise Mr. E. F., of (*Place of business*), to make an application in our names, in the matter of the above mentioned charity, to his lordship the Master of the Rolls [*Or*, his honour the Vice-Chancellor ——], in conformity with the order or certificate dated the —— day of ——, 187—, of the Board of Charity Commissioners for England and Wales.

Dated this —— day of ——, 187—.

A. B.
C. D.

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practice as to which see Dan. Pr. 1050, *et seq.* ; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*p*) As to this order or certificate, see *ante*, No. 2022, n. (*e*).

(*q*) See Dan. Pr. 1768.

(*r*) *Ibid.*, 1769. The practice of requiring the authority of the applicants and a certificate from their solicitor as to their competency to pay costs, is not now adhered to : *ib.* n. (*v*).

2033. Certificate of the applicants' solicitor, as to their competency to pay costs (*s*).

(*Name of Charity.*)

I hereby certify, that A. B., C. D., *&c.*, in the order or certificate of the Board of Charity Commissioners for England and Wales, dated the —— day of ——, 187—, in the matter of the above mentioned charity, respectively named, are competent to pay all costs which may be incurred in the matter of the application proposed to be made by them in pursuance of the said order or certificate.

Dated this —— day of ——, 187—.

E. F.,
Solicitor for the said A. B.,
and others, above named.

2034. Petition of appeal from an order of a County Court (*t*).

In Chancery.

(*Title, as in the proceedings in the Court below.*)

On Appeal from the County Court of A., holden at B.

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition* (*u*)).

Showeth as follows:

1. *Set out order or certificate of the Board of Charity Commissioners, authorising the application to the County Court.*

2. *State the application to such Court; and the order complained of.*

3. Your petitioner is advised that the said order of the —— day of ——, 187—, is erroneous: inasmuch as (*State why; and the substance of the order that ought to have been made, according to the petitioner's view*).

4. Your petitioner has given due notice in writing to the Judge of the said County Court, and also to the said Board of Charity Commissioners, that he is desirous of appealing against the said order of the said Court; and the said Board have issued their order or certificate dated the —— day of ——, 187—, allowing such appeal.

Your petitioner therefore humbly prays, that the said order of the —— day of ——, 187—, made by the said County Court, may be varied or reversed: by providing that, *&c.*; or may be remitted to the said Court, with such declaration or directions in relation thereto as to your lordship may seem meet.

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*s*) See *ante*, No. 2032, n. (*r*).

(*t*) See 16 & 17 Vic. c. 137, ss. 39, 40, 44; Dan. Pr. 1772. For order in like case, see *Re Donnington Church Lands*, V. C. S. 9 Mar. 1860, Reg Lib. A. 502: 6 Jur. N. S. 290: 8 W. R. 301.

(*u*) As to who may petition, see Dan. Pr. 1772.

2035.

Petition of appeal from an order of the Charity Commissioners (*x*).

In the matter of the Charities of V. P. and Sir S. W., in the parishes of H., W. H., and S. H., in the county of M.; and of the Charitable Trusts Acts, 1853, 1855, and 1860 (*y*).

To the Right Honourable the Master of the Rolls.

The humble petition of G. N., of *&c.*, and J. T., of, *&c.*

Showeth as follows:

1. Your petitioners are two of the rated inhabitants of the parish of H., in the county of M.

[2—8. Statements showing the creation of charitable trusts of land in the parish of H.; the division of the parish for ecclesiastical purposes; and an apportionment of the charities thereof.]

9. On the 10th day of November, 1863, the Charity Commissioners for England and Wales made and passed an order under their common seal, in the words and figures following; that is to say: (*Order of the Board, appointing trustees of the charities, and vesting the charity lands in the official trustee of charity lands*).

10. The following public notice hath likewise been issued by the said Charity Commissioners; that is to say: (*Notice of the order having been made*).

11. The said order of the Charity Commissioners for England and Wales hath, in manner aforesaid, been definitively published.

[12. Statement as to the division of the parish for civil purposes.]

13. Your petitioners are aggrieved by the said order of the Board of Charity Commissioners: inasmuch as (*&c.: Stating the grounds*).

14. Due notice of the intention of your petitioners to appeal against the said order of the Board of Charity Commissioners has been given to the said Board, by delivering such notice to the said Board at their office twenty-one days before presenting this petition (*z*).

Your petitioners therefore most humbly pray as follows:

1. That the said order of the 10th day of November, 1863, of the Board of Charity Commissioners for England and Wales, as to the appointment of new trustees of the charities of V. P. and Sir S. W., may be discharged or varied; or may be remitted

(*x*) See *Re Hackney Charities*, 10 Jur. N. S. 941: 12 W. R. 1129, M. R.: S. C. on appeal, 11 Jur. N. S. 126: 13 W. R. 398: *post*, No. 2036; and see 23 & 24 Vic. c. 136, ss. 4, 8, 9: as amended by 32 & 33 Vic., c. 110, ss. 9, 10, 11; and Dan. Pr. 1774, 1775.

(*y*) Say now: "The Charitable Trusts Acts, 1853 to 1869."

(*z*) See 23 & 24 Vic. c. 136, s. 8.; Dan. Pr. 1774; and see as to giving notice to the Attorney-General, 32 & 33 Vic. c. 110, s. 11; Dan. Pr. 1775.

to the said Board for reconsideration: with such declaration in relation thereto as to your lordship may seem meet.

2. That, if necessary, it may be declared that the lands so held as aforesaid, upon the charitable trusts created by the said V. P. and Sir S. W., are, and have been, well and effectually vested in the Churchwardens and Overseers for the time being of the original and entire parish of St. J. at H., and their successors, for an estate in fee simple, by virtue of the statute in that behalf.

3. That the costs of this application may be provided for.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

2036. Appeal petition of the Attorney-General, from order on appeal from an order of the Charity Commissioners (*a*).

Title, as in No. 2035, *ante; and address to the L. C.*

The (*b*) petition of appeal of Her Majesty's Attorney-General.

Showeth as follows:

1. G. N. and J. T., two of the rated inhabitants of the parish of H., in the county of M., presented their petition in the above matters to the Right Honourable the Master of the Rolls: which came on to be heard on the 5th day of November, 1864 (*c*); and upon the hearing thereof, his honour the Master of the Rolls ordered that a certain order in the said petition mentioned of the 10th day of November, 1863, of the Board of Charity Commissioners for England and Wales should be discharged; and that the rest of the petition should stand over until the last petition day in Hilary Term, 1865; with liberty for the petitioners, in the meantime, to lay proposals before his honour at Chambers for a scheme for the future management of the charities in the petition mentioned.

2. It appears to your petitioner that the said order of the Master of the Rolls was erroneous; and that the said petition ought to have been dismissed with costs.

Your petitioner therefore appeals against the said order of the 5th day of November, 1864; and (*b*) prays,

(*a*) *Re Hackney Charities, ante*, No. 2035, n. (*x*). As to appeals, from orders made by a Judge at Chambers under the Charitable Trusts Act, see 16 & 17 Vic. c. 137, s. 28; Ord. XLI. 13; Dan. Pr. 1771. As to rehearings and appeals in general, see *ante*, No. 1609, *et seq.*

(*b*) The Attorney-General petitions in the same form as a peer: as to whom, see *ante*, No. 167, n. (*f*); 1628, n. (*h*).

(*c*) See *ante*, No. 2035, n. (*x*).

That the said petition may be reheard before your lordship; and that the said order may be discharged; and that the said petition may be dismissed with costs.

Or that such other order may be made in the premises as the circumstances of the case may require.

And your petitioner, &c.

It is intended to serve this petition on G. N. and J. T., and on the Rectors and Churchwardens of H., W. H., and S. H.

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4. *The Burial Acts* (*d*).

2037. Petition, that charity lands vested in parochial trustees may be taken for a grave-yard (*e*).

In Chancery.

(*Branch of Court* (*f*).)

In the matter of the Burial Board for the parish of E., in the county of S. And in the matter of the Act 15th and 16th Victoria, chapter 85, intituled "An Act to amend the laws respecting the burial of the dead in the metropolis"; and of the Act 16th and 17th Victoria, chapter 134, intituled "An Act to amend the laws concerning the burial of the dead in England beyond the limits of the metropolis, and to amend the Act, concerning the burial of the dead in the metropolis"; and of the Act 17th and 18th Victoria, chapter 87, intituled "An Act to make further provision for the burial of the dead in England, beyond the limits of the metropolis."

Address of the petition: see ante, No. 56.

The humble petition of the Burial Board for the parish of E., in the county of S.

Showeth as follows:

1. *Appointment of the petitioners to be the Burial Board of the parish.*

2. *Order in Council, directing that burials in the parish churchyard should be discontinued.*

3. *Charitable use on which an allotment of land proposed to be taken for a new burial ground is held.*

4. *Resolution of the vestry approving of the site.*

5. *Assent, by a majority of the trustees thereof, to the land being so appropriated.*

6. The Charity Commissioners for England and Wales have issued their order or certificate dated, *&c.*, in relation to the

(*d*) See 15 & 16 Vic. c. 85, s. 29; 16 & 17 Vic. c. 134; 17 & 18 Vic. c. 87; Dan. Pr. 1781, 1782; and see Baker on the Acts; Glen on the Acts.

(*e*) See Dan. Pr. 1782. For petition in like case, see *Re Egham Burial Board* (filed 12 Aug. 1857); and for order dismissing same without costs, see V. C. W., 3 Aug. 1857, Reg. Lib. A. 1570: 3 Jur. N. S. 956.

(*f*) See Ord. VI. 6; and *ante*, No. 197.

premises; and such certificate is as follows; that is to say: (*Setting out certificate authorising the application to the Court by petition for authority to appropriate the land*).

7. *Letter from the Home Secretary, signifying his approval of the site.*

Your petitioners therefore humbly pray, that they may be authorised and empowered to appropriate and take a portion of the said allotment to the extent of —— acres, as shown on the said map approved by the said Secretary of State, for the purposes of a burial ground for the said parish of E.; and that the trustees of the said land may be directed to execute a conveyance (if any be necessary or expedient) for vesting in your petitioners such —— acres, or other portion of land so to be appropriated by your petitioners for the purposes aforesaid.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

2038.

Summons, that charity land, vested in parochial trustees, may be taken for a grave-yard (*g*).

In Chancery.

(*Title, as in* No. 2037, *ante.*)

Let (*&c.: Proceed as in* No. 1123, *ante, to* forenoon), on the hearing of an application on the part of the Burial Board for the parish of E., in the county of S., that they may be (*Continue as in prayer of* No. 2037, *ante, to* purposes aforesaid).

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

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5. *Municipal Corporations Acts* (*h*).

2039.

Petition, for the appointment of new trustees of property held by a corporation for charitable purposes (*i*).

In Chancery.

(*Branch of Court* (*k*).)

In the matter of the several municipal charities in the city of O., or the charities heretofore vested in the Mayor, Bailiffs, and Commonalty of the same city, or in

(*g*) See Dan. Pr. 1782. The application can only be made by summons when so directed by the Charity Commissioners' certificate; and then by an originating summons: for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*h*) See 5 & 6 Will. IV. c. 76, s. 71; 16 & 17 Vic. c. 137, s. 65; Dan. Pr. 1782—1783.

(*i*) *Re Oxford Charities*, M. R. 9 Mar. 1861.

(*k*) See Ord. VI. 6; and *ante*, No. 197.

any of the members of such body corporate, in their or his corporate capacity; And in the matter of A. B.'s Charity, in the same city; And in the matter of the Act 52nd George the Third, chapter 101; And in the matter of the Act 5th and 6th William the Fourth, chapter 76; And of the Charitable Trusts Act, 1853.

To the Right Honourable the Master of the Rolls.

The humble petition of W. H. B., of O., esquire (*and eight others*).

Showeth as follows:

[1—3. Statements of an order dated 1st Sept. 1836, directing the Master to appoint trustees of and for the charity estates and property late vested in, or under the administration of, the Corporation of O., or any of the members thereof in that character, which were affected by section 71 of the 5 & 6 Will. IV., c. 76; the Master's report appointing common and separate trustees of the classes of charities called the "Church charities," and the "General charities," in pursuance of such order; and an order, dated 2nd Aug. 1837, confirming such report, in part (*l*):]

4. A. B., one of the separate trustees of the said general charities, and who died on or about, *&c.*, by his last will, dated, *&c.*, and which has been duly proved by the executors thereof since his decease, directed his executors to transfer to the charitable trustees of the city of O., free of legacy duty, his ten shares of £20 each in the capital stock of the N. S. R. company: to be holden by such trustees and their successors for ever, upon the trusts thereby declared for the application of the dividends of the said shares in the purchase of coals, for the benefit of poor families respectively resident in the parishes of S. E. and S. C., in O.

5. The said R. S. (*and others of the appointed trustees*) have all departed this life; and the Lord Bishop of H. and your petitioners are the only surviving trustees of the same charities.

6. The said L. B. of H. and your petitioners W. H. B., *&c.*, are the only surviving common trustees of both the said classes of charities; and the said L. B. of H. is desirous of being discharged therefrom.

7. Your petitioners W. W. and J. P. are the only survivors of the four separate trustees of the said church charities: making altogether only eight continuing trustees thereof; and the said J. W. is the only survivor of the said four separate trustees of the said general charities: making altogether only seven continuing trustees thereof; and all the said several trustees are now advanced in years.

8. Under the circumstances aforesaid your petitioners, and the said L. B. of H., being desirous of applying to this honourable

(*l*) See *Re Oxford Charities*, 3 M. & C. 239, 244; Dan. Pr. 1782.

Court for an order discharging the said L. B. of H. from being a trustee of the said several charities, and appointing new trustees thereof respectively, caused a notice in writing to be transmitted to the Board of Charity Commissioners for England and Wales of such their desire (*m*); and the said Commissioners, by their order or certificate under their corporate seal, and dated, *&c.*, authorised your petitioners (*&c.: Stating the substance of the order or certificate*).

9. The following persons are fit and proper persons to be appointed new trustees of the said several charities, in the place and stead of the several deceased and retiring trustees; and they have respectively, by writing under their respective hands, signified their consent to act as such trustees, jointly with the continuing trustees, if appointed; that is to say: (*Setting out the names and additions of the proposed new trustees*):

Your petitioners therefore humbly pray as follows:

1. That the said L. B. of H. may be discharged from being a trustee of the said several charities; and that the said (*Names of proposed trustees*) may be appointed trustees of the said several general charities, and of the said charity called A. B.'s charity: in the place of the said several deceased trustees thereof, and of the said L. B. of H.

2. That the same several last named persons may also be appointed trustees of the said several church charities: in the place of the said several deceased trustees thereof, and of the said L. B. of H.

3. That all the real and personal property now held by your petitioners, upon trust for the said several charities respectively, may be conveyed, assigned and transferred or paid: so, and in such manner, as to vest in the continuing and new trustees to be appointed, as aforesaid, upon and for such and the same trusts as the same respectively are now subject or liable to.

4. That it may be referred to the proper Taxing Master to tax your petitioners, and the L. B. of H., their costs, charges, and expenses of their said application to the said Board of Charity Commissioners for England and Wales, and consequent thereon; and also to tax your petitioners, and the L. B. of H., and all other parties, their costs of this application: as between solicitor and client.

5. That an inquiry may be directed in what way, and out of what fund, such costs, and costs, charges and expenses, ought to be raised and paid, by apportionment on the said several charities, or other-

(*m*) See *ante*, No. 2023.

wise; and that such costs, and costs, charges and expenses, may be raised and paid accordingly.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

(*Signatures of the petitioners, and attestation: see ante*, No. 2024.)

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6. *Charitable Uses Acts* (*n*).

2040. Summons, to enrol a deed relative to a charitable use (*o*).

In the matter of an indenture dated the —— day of ——, 187—, relating to the A. Chapel, situate at B., in the county of C. [*Or other substantial matter*].

And in the matter of the Act 29th and 30th Victoria, chapter 57, intituled "An Act to make further provision for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts."

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of (*Names, residences, and additions of the applicants*): trustees of

Or, governors of—*Or*, directors of—*Or*, managers of—*Or*, being persons entitled to act in the management of—*Or*, being persons interested in

the above mentioned charity: that the deed, assurance, or instrument

Or, that the several deeds, assurances, or instruments

specified in the schedule hereto may be enrolled in this Court, within six calendar months from the date of this order: notwithstanding the time limited by law for that purpose has expired. Dated (*&c.: Conclude as in* No. 60, *ante*).

The Schedule above referred to.

(*Set out the date, parties, and object of the deed, &c.; as thus:* An indenture dated the —— day of ——, 187—, made between A. B., of the one part, and C. D., E. F. and G. H., of the other part: being a conveyance of certain hereditaments at ——, for and upon the charitable uses and trusts therein mentioned.)

(*n*) See 29 & 30 Vic. c. 57; Dan. Pr. 1784; see also 27 & 28 Vic. c. 13, s. 3; Dan. Pr. 1783.

(*o*) Dan. Pr. 1784. For order in like case, see *Re Page*, V. C. M. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2378. The application must be made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto. The application is made *ex parte*.

2041.
Affidavit in support of the summons (*p*).

Formal parts: see ante, No. 9.

1. *Identify the instrument to be enrolled; as thus:* The parchment [*Or*, paper] writing now produced and shown to me, and marked A (*q*), is the deed, assurance, or instrument mentioned or referred to in the summons taken out in this matter, on behalf of A. B. and others, on the —— day of ——, 187—, at the Chambers of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor Sir ——].

2. *Show that the instrument sought to be enrolled is an instrument conveying or charging hereditaments, or an estate or interest therein, for charitable uses; that it was made really and bonâ fide for full and valuable consideration, actually paid at or before the making or perfecting thereof, or reserved by way of rent charge or other annual payment, or partly paid at or before the making or perfecting of such instrument, and partly reserved as aforesaid, without fraud or collusion.*

3. *Show that at the time of making the affidavit possession or enjoyment is held under such instrument.*

4. *Show that the omission to enrol the instrument in proper time has arisen from mere ignorance or inadvertence, or from the destruction thereof by time or accident.*

5. *State that no action, suit, or proceeding is pending for setting aside the instrument, or for asserting any right founded on the invalidity thereof; and that no decree or judgment has been already obtained, founded on such invalidity.*

6. *Show means of knowledge.*

Section III.—The Trustee Relief Act (*r*).

2042.
Affidavit of trustee, for leave to pay or transfer a trust fund into Court (*s*).

In Chancery.

In the matter of (*Describe the trust; as thus:* the trusts of the sum of £1000, bequeathed by the will of A. B. in favour of C. D.);

(*p*) See notes to No. 2040, *ante*.

(*q*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*r*) 10 & 11 Vic. c. 96; amended by 12 & 13 Vic. c. 74; Ord. XLI. 1—9. As to these Acts and rules, the cases thereon, and practice thereunder, see Dan. Pr. 1784—1797; see also Appach & Darling on the Act; Lewin on Trusts, 289, 291, 741—750; Seton, 771—773. As to the jurisdiction of the County Courts, see 30 & 31 Vic. c. 142, ss. 24—26; Dan. Pr. 1785, n. (*r*), 1972.

(*s*) As to the form of the affidavit, see 10 & 11 Vic. c. 96, s. 1; Ord. XLI. 1, 3; Dan. Pr. 1787. For the mode of making payments and transfers into, and deposits in Court, see Dan. Pr. 1636, *et seq.*; and of making investments, see *ib.* 1639, *et seq.*; see also *ib.* 1787.

And in the matter of the Act 10th and 11th Victoria, chapter 96, intituled "An Act for better securing trust funds, and for the relief of trustees."

Add, when applicable: and of the Act 12th and 13th Victoria, chapter 74, intituled "An Act for the further relief of trustees (*t*)."

I, E. F., of (*&c.: Set out the name and address of the trustee* (*u*)), make oath and say as follows:

State where the trustee is to be served with notice (*x*)*; as thus:* 1. The office of Messrs. G. and H., situate at (*State where*), in the (county) of ——, is the place where I am to be served with any petition, or any notice of any proceeding or order of this honourable Court, or of any Judge thereof at Chambers, relating to the trust fund hereinafter mentioned.

Describe the amount of money, stock or securities which the trustee proposes to pay or transfer into, or deposit in Court, to the credit of the trust (*y*)*; as thus:* 2. Under the provisions of the above mentioned Act, I propose, with the privity of the Accountant-General of this honourable Court, to pay into the Bank of England, the sum of £ A. cash, and to transfer into his name the sum of £ B. bank 3*l.* per cent. annuities, to the credit of: In the matter of (*Describe the trust; as thus:* the trusts of the sum of £1000, bequeathed by the will of A. B., in favour of C. D. (*z*)).

Set out a short description of the trust, and of the instrument creating it (*a*)*; as thus*: 3. The above named A. B., by her last will dated, *&c.*, bequeathed a legacy of £1000 to the above named C. D., therein described as the daughter of E. D. and F. his wife; and directed that the interest and dividends thereof should accumulate until the said C. D. attained the age of twenty-one years; and then to be paid to her with the capital; but in case of the death of the said C. D. under that age, then the testatrix directed that the said legacy should fall into the residue of her estate; and the testatrix thereby bequeathed such residue to L. M., absolutely; and appointed me the deponent, and one N. O., executors of her will.

4. The said testatrix died on, *&c.*, without having altered or revoked her said will; and I and the said N. O. duly proved such will in the Principal Registry of Her Majesty's Court of Probate, on, *&c.*

(*t*) As to the title of the affidavit, see Ord. XLI. 1 (1), 9; Dan. Pr. 1790.

(*u*) See Ord. XLI. 1; Dan. Pr. 1787. Where there is more than one trustee, the affidavit should be made by both or all; but where a reasonable explanation is given, the Accountant-General may be directed to receive the fund on the affidavit of one only: see Dan. Pr. 1788.

(*x*) Ord. XLI. 1 (2), 8; Dan. Pr. 1787.

(*y*) Ord. XLI. 1 (3); Dan. Pr. 1787.

(*z*) As to the account to which the fund should be paid, see Dan. Pr. 1788; and see *ib.* 1635; 12 Beav. 210, n.; Appach & Darling on the Act, 44.

(*a*) Ord. XLI. 1 (4); Dan. Pr. 1787.

5. On the —— day of ——, I and the said N. O. set apart, out of the assets of the said A. B., the sum of £1000 to answer the said contingent legacy to the said C. D.; and invested such sum in the purchase in our joint names of the sum of £ A. bank 3*l.* per cent. annuities. The said N. O. has since died; and the said C. D. is now an infant of the age of —— years.

6. I have received the sum of £ B. for the half-year's interest which accrued due on the said bank annuities on the —— day of ——; and after deducting and retaining thereout the sum of £ C., for the costs of paying and transferring the said trust fund into Court (*b*), there remains the sum of £ D. cash; and which sums of £ A. bank 3*l.* per cent. annuities, and £ D. cash, I propose to transfer and pay into Court, as hereinbefore stated.

State the names of the persons interested in, or entitled to the fund, to the best of the knowledge and belief of the trustee (*c*)*; as thus:* 7. To the best of my knowledge and belief, the only persons interested in, or entitled to the said sums of £ A. bank 3*l.* per cent. annuities, and £ D. cash, are the said C. D., as the immediate legatee thereof: subject to the contingency aforesaid; and the said L. M.: as the residuary legatee named in the said testatrix's will.

Submission of the trustee to answer inquiries; as thus (*d*)*:* 8. I submit to answer all such inquiries relating to the application of the said sums of £ A. bank 3*l.* per cent. annuities, and £ D. cash, as this honourable Court, or any Judge thereof at Chambers, may think proper to make or direct.

Where it is deemed unnecessary to have the money, or the dividends or interest of stock or securities, invested in the mean time, the affidavit should further contain a statement to that effect (*e*)*; as thus:* 9. It is unnecessary to invest the said sum of £ D. cash, or the dividends or interest hereafter to accrue on the said sum of £ A. bank 3*l.* per cent. annuities.

Sworn (*&c.: see ante*, No. 12).

2043. Request to Accountant-General, to discontinue investing (*e*).

(*Title, as in the trustee's affidavit.*)

Sir:

I claim [*Or*, I am the solicitor to C. D.: who claims] to be entitled to the (*Describe the present state of the fund; as thus:* £1000, bank 3*l.* per cent. annuities, and £50 cash), standing to the credit of the above mentioned matter [*or as may be*]. And I

(*b*) As to the costs of paying in the fund, and of an application to get it out, see Dan. Pr. 1795—1797.

(*c*) Ord. XLI. 1 (5); Dan. Pr. 1787.

(*d*) Ord. XLI. 1 (6); Dan. Pr. 1787.

(*e*) Ord. XLI. 3; Dan. Pr. 1788.

request that the said cash may not be invested; and that the investment of the interest on the said bank annuities [*or as may be*] may be discontinued. Dated this —— day of ——, 187—.

C. D., of (*residence and addition*).

[*Or*, X. Y., of (*place of business*), solicitor for C. D., of, *&c.*].

To the Accountant-General of the Court of Chancery.

2044.

Notice of a payment and transfer under the Act having been made (*g*).

Title, as in the trustee's affidavit; and other formal parts: see ante, No. 54.

Take notice, that on the —— day of ——, 187—, E. F., of (*residence and addition*), the executor of the will of A. B., late of (*residence and addition*), deceased [*or as may be*]: under the circumstances set forth in the affidavit of the said E. F. filed in this matter on the —— day of ——, 187—, and with the privity of the Accountant-General of the High Court of Chancery: transferred into the name of the said Accountant-General the sum of £ B. bank 3*l.* per cent. annuities, and paid into the Bank of England the sum of £ D. cash, to the credit of (*Describe what; as thus:* "In the matter of the trusts of the sum of £1000 bequeathed by the will of A. B., in favour of C. D.), in accordance with the provisions of the above mentioned Act of Parliament.

And also take notice, that you are named in the said affidavit as the person [*Or*, as one of the persons] entitled to, or interested in, the said sums of bank annuities and cash [*or as may be*].

2045.

Petition for transfer and payment out, of fund paid in under the Act (*h*).

Title, as in the trustee's affidavit (*i*)*—and address to the L. C. or M. R.: see ante*, No. 56.

The humble petition of C. D., of (*residence and addition*).

Showeth as follows:

1. *Statement of the trustee's affidavit on which the fund was paid in; as thus* (*k*): The trust fund to which this petition relates was paid and transferred into Court, to the credit of the above mentioned matter, on the affidavit of E. F. filed therein on the —— day of ——, 187—. The said affidavit stated, among other

(*g*) Ord. XLI. 4; Dan. Pr. 1788. As to serving the notice abroad by registered letter, and as to advertising the notice, see Dan. Pr. 1789.

(*h*) See Ord. XLI. 5, 9; Dan. Pr. 1790. As to the persons entitled to apply, see Dan. Pr. 1790. As to service of the petition, see Ord. XLI. 6, 7; Dan. Pr. 1791, 1792. As to the evidence in support, see Dan. Pr. 1793; and as to petitions, generally, see Dan. Pr. 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto.

(*i*) See Ord. XLI. 9; Dan. Pr. 1790.

(*k*) As to the statements of the petition, see Dan. Pr. 1791.

things, that (*Set out from the affidavit the description of the trust —the manner in which it was created—the interests of the persons entitled—the difficulty which induced the trustee to pay the fund into Court—and the payment in: see statements in* No. 2042, *ante.*

2. *Show the present state of investment of the fund, from the Accountant-General's voluntary certificate; as thus:* The said sums of £ A. bank 3*l.* per cent. annuities, and the interest and accumulations of interest thereon, are now represented by the sums of £ B. bank 3*l.* per cent. annuities, and £ C. cash, remaining on the credit of the said matter.

3. *State how the petitioner acquired title; as thus:* Your petitioner is the person referred to in the will of the said testatrix, and in the said affidavit of the said E. F., as C. D., daughter of E. D., and F. his wife. On the —— day of ——, 187—, your petitioner attained her age of twenty-one years; and thereupon became absolutely entitled to the said trust fund.

4. *Name a place for service* (*l*); *as thus:* The office of your petitioner's solicitor, Mr. X. Y., situate at (*State where*), in the (county) of ——, is the place where your petitioner may be served with any petition or summons, or notice of any proceeding or order of this honourable Court, relating to the said trust fund.

Your petitioner therefore humbly prays, as follows:

1. That the costs of your petitioner (*m*) of this application may be taxed by the Taxing Master: as between solicitor and client.

2. That so much of the said £ B. bank 3*l.* per cent. annuities as with the said £ C. cash, and any interest to accrue on the said annuities, will be sufficient to raise the said costs, and also the legacy duty payable in respect of the said trust fund, may be sold.

3. That out of the money to arise by such sale, the said costs may be paid to your petitioner's solicitor; and the said duty may, upon the requisition of the Commissioners of Inland Revenue, be transferred to the account of the public monies of the Receiver-General of Inland Revenue at the Bank of England (*n*).

4. That the residue of the said bank 3*l.* per cent. annuities may be transferred to your petitioner C. D., spinster.

[*Or,*

That the said sums of £ B. bank 3*l.* per cent. annuities, and £ C. cash, and any interest to accrue on the said bank annuities, may be transferred and paid to your petitioner C. D., spinster—*or as may be*].

Or that (*&c: Conclude as in* No. 57, *ante; and add foot note,* No. 58).

(*l*) See Ord. XLI. 8; Dan. Pr. 1790.

(*m*) As to the costs of persons served with application, see Dan. Pr. 1796.

(*n*) See Ord. 10 Jan. 1870, r. 1 (Law Rep. 5 Ch. xliv.); Dan. Pr. 1659.

2046.

Summons, for transfer and payment out, of fund paid in under the Act (*o*).

In Chancery.

(*Title, as in the trustee's affidavit* (*p*).)

Let (*&c.: Continue as in* No. 60, *ante* (*q*), *to* noon), on the hearing of an application on the part of C. D., of (*residence and addition*)—*If so:* in the affidavit of E. F. (*Trustee*), filed in this matter the —— day of ——, 187—, named:

1. That (*Continue as in prayer of* No. 2045, *ante, to* spinster; *but substitute* applicant *for* petitioner; *and describe the fund fully, according to the Accountant-General's voluntary certificate*).

The office of the applicant's solicitor, Mr. X. Y., situate at (*State where*), in the (county) of ——, is the place where the applicant may be served with any petition or summons, or notice of any proceeding or order of this Court, relating to the said trust fund (*r*).

Dated (*&c.: Conclude as in* No. 60 *ante; and add foot note* (*ante*, No. 1123), *if it be an originating summons requiring service* (*q*)).

Section IV.—The Trustee Acts, 1850 and 1852 (*t*).

2047.

Petition, for appointing a person to convey lands: whereof a trustee died seised, without an heir (*s*).

In Chancery.

(*Branch of Court.*)

In the matter of the trusts of an indenture dated 1st November, 1831, made between R. K. and C. W. K. his wife of the first part, N. K. of the second part, and S. B. of the third part.

And in the matter of The Trustee Act, 1850.

(*o*) For order in like case, see *Re Glover*, M. R. at Chambers, 18 Dec. 1866, Reg. Lib. A. 2797. As to the jurisdiction on summons, see Ord. XXXV. 1 (3); XLI. 5; Dan. Pr. 1790. As to the persons to be served with the summons, see Dan. Pr. 1791, 1792; and as to summonses generally, see *ib.* 1050, *et seq.:* and see *ante*, Nos. 1123, *et seq.*, 2045, and notes thereto.

(*p*) See Ord. XLI. 9; Dan. Pr. 1790.

(*q*) The first application after the payment in must be made by an originating summons; subsequent applications may usually be made by an ordinary summons: see Dan. Pr. 1790.

(*r*) See Ord. XLI. 8; Dan. Pr. 1790.

(*s*) *Re Kinton:* petition filed 11 Jan. 1867. For the order thereon, see M. R. 12 Dec. 1866, Reg. Lib. A. 2791; and see 13 & 14 Vic. c. 60, s. 15; Dan. Pr. 1807, *et seq.;* Seton, 793, No. 11.

(*t*) 13 & 14 Vic. c. 60; 15 & 16 Vic. c. 55. As to these Acts, see Dan. Pr. 1798—1832. Fisher on Mort. 1024—1030; Lewin, 751—782; Seton, 790—825; Shelford R. P. Acts, 633—663; Smith's Comp. 1103—1107; Sugd. Stat. 410—445; and Headlam on the Act of 1850. As to the jurisdiction of the County Courts under these Acts, see Dan. Pr. 1798, n. (*x*), 1971. As to the Stamp Duties on orders made under these Acts, see The Stamp Act, 1870

Add, where applicable: and of the Act 15th & 16th Victoria, chapter 55, intituled "An Act to extend the provisions of the Trustee Act, 1850."

Address of the petition: see ante, No. 56.

The humble petition of E. H., of, *&c.*, M. H., of, *&c.*, and W. C. S., of, *&c.*

Showeth as follows:

1. By the above mentioned indenture dated 1st November, 1831, and a fine duly levied shortly after that date, in pursuance of a covenant in the same indenture contained, the fee simple and inheritance of and in all that messuage, *&c.*, situate at, *&c.*, was conveyed and assured unto and to the use of the above named S. B., his heirs and assigns, in trust for the above named N. K., his heirs and assigns.

[2—3. Statements of the death and intestacy of S. B., and grant of administration of his personal estate.]

4. The said S. B. was illegitimate, and never married; and under the circumstances aforesaid died intestate as to trust estates, and without an heir.

[5—7. Statements of the devise by N. K. of the said hereditaments to the petitioners E. H. and M. H., on trust; his death; probate of his will; and an agreement for the sale by them of the said hereditaments to the co-petitioner W. C. S.]

8. Your petitioners are desirous of carrying into effect the said agreement; but by reason of the said S. B. having died intestate as to the said hereditaments, and without an heir, they are unable to do so without the assistance of this honourable Court.

Your petitioners therefore humbly pray, that your petitioner E. H. may be appointed to convey the

(33 & 34 Vic. c. 97): amended by the 34 & 35 Vic. c. 4; Dan. Pr. 1831. The Commissioners of Inland Revenue have intimated to the Chancery Registrars that in their opinion the following descriptions of orders made under the Trustee Act, 1850, are chargeable under the Stamp Act, 1870, with the following duties:—(1) Order appointing new trustees: one stamp of 10*s.* (2) Order appointing new trustees, and vesting in them the right to transfer stock: one stamp of 10*s.* (3) Order appointing new trustees, and vesting land in them: two stamps of 10*s.* each. (4) Order appointing new trustees, and vesting in them the right to sue for *choses in action:* two stamps of 10*s.* each. When the *choses in action* are in the nature of a mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment, and the total amount thereby secured is under 2000*l.*, an *ad valorem* stamp at the rate of 6*d.* per 100*l.* is to be substituted for the second stamp of 10*s.* (*Vide* Stamp Act, 1870, Schedule, *Title*, Mortgage, paragraph 3). In no case when new trustees are appointed, and a vesting order made, are more than two 10*s.* stamps required. No stamp is required in respect of any order merely vesting the right to call for a transfer of, and to transfer, any stock: Registrars' Notice, March, 1871: W. N. (1871), Pt. II. 112.

messuage or tenement and hereditaments comprised in and assured by the said indenture of the 1st November, 1831, for all the estate and interest late of the said S. B. therein, unto and to the use of your petitioner W. C. S., or to such uses, and in such manner, as he shall direct.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

2048.

Petition, for the appointment of new trustees, and for a vesting order of lands, right to call for a transfer of stock, and right to sue for *choses in action* (*u*).

In Chancery.

(*Branch of Court.*)

Title—and address: see ante, No. 2047.

The humble petition of S. W., the wife of W. N. W., of, *&c.*, by B. A., her next friend, W. F. W. (*and others*), all of, *&c.*

Showeth as follows:

[1—15. Statements showing a settlement by the will of J. F., of his real and personal estate, in trust for the petitioner S. W. for life, with remainder to her children, the co-petitioners; and that F. W. N., and G. E. F. were the surviving trustees of the will; and a statement of the particulars of the personal estate: including a sum of bank 3*l.* per cent. annuities, and sums due on mortgage.]

16. The said G. E. F. has refused to act further in the trusts of the said will; and your petitioners are desirous that some fit and proper persons should be appointed in his stead, and in the stead of the said W. R. (*deceased trustee*); but inasmuch as the said will does not contain any power for the appointment of new trustees thereof, it has become necessary to apply to this honourable Court for that purpose.

17. J. G. N., of (*residence and addition*), and W. D., of, *&c.*, are fit and proper persons to be appointed such trustees; and they have respectively consented and agreed to be so appointed, jointly with the said F. W. N., and to act as such trustees of the said will.

Your petitioners therefore humbly pray, as follows:

1. That the said J. G. N., and W. D., may be appointed new trustees of the said will of the said J. F., deceased, in substitution for the said W. R., deceased, and the said G. E. F. (who has refused to act further in the trusts thereof) jointly with the said F. W. N.; and that the lands remaining unsold which are subject to the trusts of the said will may vest in the said J. G. N. and W. D.,

(*u*) See *Re Fuller*: petition filed 15 Jan. 1867. For the order thereon, see M. R. 7 Dec. 1866, Reg. Lib. A. 2798; and see 13 & 14 Vic. c. 35, ss. 32—37; 15 & 16 Vic. c. 55, ss. 6, 7; Dan. Pr. 1818, *et seq.*; Seton, 804—806.

jointly with the said F. W. N., as the trustees of the said will, for the estate by the said will devised to the trustees thereof.

2. That the right to call for a transfer of, and to transfer, the stock subject to the trusts of the will of the said J. F., may be vested in the said F. W. N.; and that he may be directed to transfer the same into the names of the said F. W. N. and J. G. N. and W. D., as such trustees as aforesaid.

3. That the right to sue for and recover any *chose in action* subject to the trusts of the said will, or any interest in respect thereof, may vest in the said F. W. N., J. G. N. and W. D., as such trustees of the said will.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

2049. Evidence in support of petition to appoint new trustees (*x*).

See the following forms, *ante:* which can be readily adapted:

Affidavit of eligibility of proposed trustees: No. 1353.

Their consent to act: No. 1354.

Affidavit verifying the signatures thereto: No. 1355.

2050. Summons, for the appointment of a person to convey to a purchaser under a decree or order of sale (*y*).

Formal parts: see ante, No. 60.

on the part of A. B.: who, by the Chief Clerk's certificate [*Or*, by the order] dated the —— day of ——, 187—, has been allowed the purchaser of the hereditaments (comprised in lot ——, part of the estates) directed to be sold by the decree [*Or*, order] dated the —— day of ——, 187—: that C. D., of (*residence and addition*), may be appointed to convey the said hereditaments to the said A. B., for the estate therein of E. F., deceased, in the plaintiff's bill named [*or as may be*]: such conveyance to be settled by the Judge.—*Add, where applicable:* in case the parties differ.

2051. Summons, for a vesting order, in favour of a like purchaser (*y*).

Proceed as in No. 2050, *ante, to* directed to be sold; *and continue thus:*

by the decree [*Or*, order] dated the —— day of ——, 187—: that the said hereditaments may vest in the said A. B., for the estate therein of E. F., deceased, in the plaintiff's bill named [*or as may be*].

(*x*) See Dan. Pr. 1825, 1826; and notes to Nos. 1353—1355, *ante*.

(*y*) See 15 & 16 Vic. c. 55, s. 1; Dan. Pr. 1174, 1817, 1825. For forms of orders in like case, see Seton, 807—809, Nos. 41—43. As to the jurisdiction on summons, see Ord. XXXV. 1 (4); Dan. Pr. 1041, 1174—1176, 1817, 1825. For

2052.

Consent of lord or lady of a manor, to an order vesting a copyhold estate (*z*).

In Chancery.

(*Short title, and reference to the record.*)

I, A. B., of (*residence and addition*), the lord [*Or*, lady] of the manor of C., in the county of D., consent to an order being made by the High Court of Chancery, to vest in E. F. the copyhold or customary lands holden of the said manor, whereof G. H. is the tenant on the Court Rolls thereof: for all the estate of the said G. H. therein [*or as may be*].

A. B.

2053.

Affidavit, verifying the signature thereto (*z*).

Formal parts: see ante, No. 9.

1. I saw A. B., the lord [*Or*, lady] of the manor of C., in the county of D., sign the paper writing now produced and shown to me, and marked F. (*a*), and purporting to be his [*Or*, her] consent to a vesting order being made in this cause [*Or*, matter].

Or, I know and am well acquainted with the handwriting of A. B., the lord [*Or*, lady] of the manor of C., in the county of D.: having seen him [*Or*, her] write.

2. The name or signature "——," set and subscribed to the said paper writing marked F.,

Or, to the paper writing now produced, *&c.*, and purporting to be (*&c., as above*),

is of the proper handwriting of the said A. B.

Section V.—The Leases and Sales of Settled Estates Acts (*d*).

2054.

Petition by a tenant for life, that general powers of granting building leases may be vested in trustees (*b*).

In Chancery.

(*Branch of Court* (*c*).)

In the matter of the Act 19th and 20th Victoria, chapter 120, intituled "An Act to facilitate leases and sales of

forms of summons by a purchaser (1) to pay in his purchase money, and for the appointment of a person to convey to him, see *ante*, No. 1426; and (2) to pay in his purchase money, and for a vesting order, see *ante*, No. 1427. As to the Stamp duty on a vesting order, see *ante*, No. 2047, n. (*t*).

(*z*) See 13 & 14 Vic. c. 35, s. 28; Dan. Pr. 1815, 1816; and see Seton, 798, No. 26. For order appointing a person to surrender copyholds to a purchaser, for the estate therein of an adult defendant, see *Re Lee, Kenyon* v. *Lee*, V. C. J. at Chambers, 16 June, 1870, Reg. Lib. B. 1853.

(*a*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*b*) *Re Marquis of Cholmondeley:* petition filed 4 Feb. 1867. For the order thereon, see V. C. S. 21 Dec. 1866, Reg. Lib. A. 2887; S. C., W. N. (1866), 388; and see 19 & 20 Vic. c. 120, s. 10; Dan. Pr. 1837, 1841. For the practice as to petitions in general, see Dan. Pr. 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto.

(*c*) As to marking the branch of the Court, see Ord. XLI. 15; Dan. Pr. 1843.

(*d*) 19 & 20 Vic. c. 120; 21 & 22 Vic. c. 77; 27 & 28 Vic. c. 45; Ord.

Settled Estates ;" and of the Act 21st and 22nd Victoria, chapter 77, intituled "An Act to amend and extend the Settled Estates Act of 1856 ;" and of the Act 27th and 28th Victoria, chapter 45, intituled "An Act to further amend the Settled Estates Act of 1856."

And in the matter of certain pieces of land, containing in the whole — a. — r. — p., or thereabouts, situate in the township of C., in the parish of R., in the county of C. ; and of two several pieces of land called "Lord's Heath," adjoining R. heath : containing together — a. — r. — p., or thereabouts, in the township and parish of R. aforesaid : forming part of the R. estate, settled by the will of G. J. M. of C., deceased (*e*).

Address of petition ; and name, address, and description of the petitioner (*f*).

Showeth as follows :

[1—14. Statements showing that under the above will the petitioner was tenant for life, and G. H. C., an infant, first tenant in tail *in esse*, of certain estates thereby settled : including the R. estate, above mentioned.]

15. It is the custom of the country where the said hereditaments are situate for landowners to grant leases for long terms of years of pieces of ground as sites for the erection of alkali works, salt works, and other works of a similar description ; and persons intending, as lessees, to expend money in the erection of buildings suitable for such works usually require leases for terms of not less than 999 years. The hereditaments above mentioned to be situate

XLI. 14—25; Regul. 8 Aug. 1857, rr. 21—23. As to these Acts, rules, and regulations, see Dan. Pr. 1832—1856; Brickdale on the Acts; *ib.* Sup.; Dart, 7, 12, 1061—1071; 3 Davidson's Conv. 426, 440, 481—485; 2 Prideaux's Conv. 29—32; Seton, 528, *et seq.;* Shelford, R. P. Acts, 664, *et seq.;* Smith's Comp. 597, 689; Sugd. Pow. 723, *et seq.;* Sugd. Stat. 288, *et seq.;* Sugd. V. & P. 498, *et seq.* As to leases under these Acts, see 19 & 20 Vic. c. 120, ss. 2—10; 21 & 22 Vic. c. 77, ss. 2—5; 27 & 28 Vic. c. 45; Dan. Pr. 1834—1838. For forms of orders vesting general powers to grant mining leases, with consent of tenant for life, see Seton, 529, No. 5; and building leases, *ib.* 532, No. 9; and approving trustees, *ib.* 533, No. 10. For form of order to carry a contract for a lease into effect, see *ib.* 532, No. 7. As to sales and dedications, see 19 & 20 Vic. c. 120, ss. 11—15; Dan. Pr. 1838—1840. For forms of orders, see Seton, 533—535. As to general provisions, see 19 & 20 Vic. c. 120, s. 16, *et seq.;* Ord. XLI. 14—25; Dan. Pr. 1840—1850. As to who may petition, see 19 & 20 Vic. c. 120, s. 16; Dan. Pr. 1840. As to the concurrence or consent necessary, see 19 & 20 Vic. c. 120, s. 17; Dan. Pr. 1841, 1842. As to the branch of the Court, and title of petitions, notices, affidavits, and proceedings, see Ord. XLI. 14, 15; Dan. Pr. 1642, 1643. As to service of notice of the application, see 19 & 20 Vic. c. 120, s. 19; Dan. Pr. 1843. As to disabilities, see 19 & 20 Vic. c. 120, ss. 36—38; 21 & 22 Vic. c. 77, s. 6; Ord. XLI. 23; Regul. 8 Aug. 1857, rr. 21, 22; Dan. Pr. 1851—1855.

(*e*) As to the title, see Ord. XLI. 15; Dan. Pr. 1842.

(*f*) See Ord. XLI. 14; Dan. Pr. 1843.

in the township of C., in the parish of R., are very advantageously situated for such purposes. The pieces or parcels of land called "Lord's Heath," described in the title or heading of this petition, offer eligible sites for the erection of villa residences; and are well adapted for building purposes. Persons intending, as lessees, to expend money are not satisfied with leases for terms of 99 years only; but, for such purposes, usually require leases for terms of not less than 999 years. Applications have been from time to time made to the agent of your petitioner for grants of leases of portions of the said hereditaments for such purposes; but by reason of the will of the said G. J. M. of C. not containing any power enabling the granting of building leases, or of any lease beyond the term of twenty-one years, such applications could not be complied with.

16. It will be for the benefit of your petitioner, and of all other persons interested in the said settled estates, and consistent with a due regard for their interests therein, and your petitioner is desirous, that general powers of granting building leases for terms not exceeding 999 years, and of entering into and making preliminary contracts to grant any such leases, of all and singular the hereditaments mentioned in the title or heading of this petition, with the view to the erection thereon by lessees of buildings suitable for alkali works, salt works, and other works of a similar character, and also general powers of granting building leases for terms not exceeding 999 years, and of entering into and making preliminary contracts to grant any such leases: with proper provisions and conditions as to making roads, paths, and other open spaces, and laying down sewers, drains, and watercourses, and otherwise, as should from time to time be considered necessary or proper for the said pieces or parcels of ground called "Lord's Heath," or of any parts or part thereof: should be vested in the said H. A. and J. T.: who are the present trustees for general purposes of the indenture dated, *&c.*, hereinbefore mentioned: and in the trustees for the time being for general purposes of the same indenture; and who are willing to undertake the exercise of such powers.

17. Your petitioner is advised that, under the circumstances hereinbefore mentioned, such powers cannot be obtained without the assistance of this Court.

18. Your petitioner, and the said L. H. C. and C. G. C., are the only persons who are beneficially interested in the said settled estates in priority, in order of limitation, to the estate in tail therein of the said infant G. H. C.

19. No application has been made to either House of Parliament for the purpose of effecting the object of this petition, or any similar object (*g*).

20. Your petitioner may be served with any order of this Court, or of the Judge in Chambers, or any notice relating to the sub-

(*g*) See 19 & 20 Vic. c. 120, s 21; Ord. XLI. 21; Dan. Pr. 1846; and *post*, No. 2056.

ject of this petition, at the office of your petitioner's solicitors, Messrs. W., Y. & W., situate at, *&c.* (*h*).

Your petitioner therefore prays (*i*), as follows:

1. That for the purposes hereinbefore mentioned, an order may be made by your lordship, vesting in the said H. A. and J. T., as the trustees for general purposes of the said indenture dated, *&c.*, and in the trustees or trustee for the time being of the said indenture: or such other persons as to your lordship shall seem fit: general powers of granting building leases for terms of years not exceeding 999 years in possession, and of entering into and making preliminary contracts to grant such leases, of all or any parts or part of the several pieces or parcels of ground and hereditaments, situate in the townships of C. and R., mentioned in the title or heading of this petition: such leases and contracts for leases to be in conformity with the provisions of the said several Acts of Parliament, so far as such provisions may be applicable to each particular case, and subject to such conditions as to your lordship may seem fit.
2. That such provisions may be made, or directions given: either by way of appointment of new trustees of the said indenture, or otherwise: for the purpose of the exercise from time to time of such powers of leasing, and of entering into or making preliminary contracts as aforesaid, as to your lordship shall seem fit.
3. That the costs of your petitioner, and of all other persons served with, or properly appearing as respondents to this petition, of this application, and incident thereto, may be taxed by the Taxing Master; and that the amount of such costs, when taxed, may be a charge upon all or a sufficient part of the said pieces or parcels of ground and hereditaments hereinbefore described.

Or that (*&c.: Concluding as in* No. 57, *ante*; *and foot note* No. 58).

2055.

Petition, by tenant for life and remainder-men, for a sale (*k*).

In Chancery.

(*Branch of the Court.*)

Title of the 19 *&* 20 *Vic. c.* 120: *see ante*, No. 2054.

And in the matter of a messuage and several closes of

(*h*) Ord. XLI. 14; Dan. Pr. 1843.

(*i*) The petitioner in this case was a peer: see *ante*, No. 167, n. (*f*).

(*k*) *Re Cumming:* petition filed 24 Jan. 1867. For the order thereon, see M. R. 21 Dec. 1866, Reg. Lib. A. 2860; and see notes to No. 2054, *ante*.

land, containing — a. — r. — p., or thereabouts, in the township of L., and — a. — r. — p., or thereabouts, in H., in the parish of K., in the county of W., called Green Land End, and a peat moss, called Hall Moss, situate within, and holden of, the manor of B., in the said county, respectively devised by the will of W. C., esquire, deceased.

Address of petition; and names, addresses, and descriptions of the petitioners.

Showeth as follows:

[1—10. Statements showing that under the above will the petitioner J. E. G. was entitled to the said hereditaments for life, with remainder to the co-petitioners: some of whom were under disability.]

11. The value of land in the vicinity of the said hereditaments, so devised as aforesaid, has considerably increased of late years; and your petitioner J. E. G. believes that the same hereditaments could now be most advantageously sold; and the monies arising from such sale could be laid out, so as to yield your petitioner J. E. G. an income very largely in excess of the rent of such hereditaments. The average annual clear rent of such hereditaments is now the sum of £——.

[12, 13. No application to Parliament—Address for service: *see ante*, No. 2054, par. 19, 20.]

Your petitioners therefore humbly pray, that the said estate called Green Land End, and the said peat moss, may be sold under the direction of this honourable Court; and that all proper inquiries may be made, and directions given, for effecting such purpose; and that the costs of, and incident to, this petition may be provided for.

Or that (*&c.: Concluding as in* No. 57, *ante; and foot note*, No. 58).

2056.

Affidavit that no application has been made to Parliament (*l*).

Formal parts: see ante, No. 9.

1. I have perused the petition preferred in this matter by (*Names of petitioners*), to the Lord High Chancellor [*Or*, to his lordship the Master of the Rolls] on the —— day of ——, 187—, under the provisions of the above-mentioned Act.

(*l*) See 19 & 20 Vic. c. 120, s. 21; Ord. XLI. 21; Dan. Pr. 1846; and *ante*, No. 2054, par. 19. On every application either to approve of a particular lease, or to vest any powers of leasing in trustees, the applicant must also produce such evidence as the Court may deem necessary to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised: 19 & 20 Vic. c. 120, s. 8; Dan. Pr. 1846. On every application for authority to sell, the Court must be satisfied, by sufficient evidence, who are the parties interested in the estate whose consent is required by the Act, and what are the circumstances which

2. Neither the said petitioners, nor any or either of them, nor any other person entitled to, or interested in, the hereditaments mentioned in the title or heading of the said petition, have or has heretofore applied to either House of Parliament for a private Act to effect the same or a similar object to that for which the sanction of this honourable Court is prayed by the said petition [*or as may be*].

3. *Show means of knowledge.*

2057

Summons, for directions as to notices (*m*).

Formal parts: see ante, No. 60.

on the part of the petitioners A. B., and others, that directions may be given as to the newspapers in which the notices, required to be given by the above mentioned Act, of the application intended to be made by their petition presented in this matter on the ——, 187—, are to be inserted.

2058.

Direction as to notices (*n*).

Master of the Rolls
[*Or*, Vice-Chancellor ——], at Chambers. —— , 187—.

Appeared: Mr. A., for the petitioner.

Read: The within petition (*Enter examination of a married woman petitioner, if any; and guardian orders, if any* (*n*).)

The Master of the Rolls [*Or*, Vice-Chancellor ——] directs, that notice of the application intended to be made by this petition be inserted in the following newspapers; namely (*State what; as thus:*

render the proposed sale proper and expedient: Ord. XLI. 22; Dan. Pr. 1846.

(*m*) See 19 & 20 Vic. c. 120, s. 20; Ord. XLI. 16; Regul. 8 Aug. 1857, r. 23; Dan. Pr. 1843. The summons should be intituled in the same manner as the petition: Regul. 8 Aug. 1857, r. 23. The application is made *ex parte*, and the original petition must be produced at the hearing of it: *ib.* As to when notices will be dispensed with, see Dan. Pr. 1844.

(*n*) See Dan. Pr. 1843. The direction is written on the petition, and signed by the Chief Clerk: Regul. 8 Aug. 1857, r. 23. Where a married woman is petitioner, the direction will not be given till after she has consented to make the application: either before the Judge, or before an Examiner; nor until, in the latter case, an office copy of the examination and certificate (see *post*, Nos. 2073—2075) is produced: Dan. Pr. 1844, n. (*k*). Where an infant is petitioner, and the appointment of a guardian for him is necessary, the order of appointment (see *post*, Nos. 2063, 2064) should be produced, before the direction is given; and where the petitioner is an infant or lunatic tenant in tail, the order giving leave to his guardian or committee to make the application (see *post*, No. 2067) must also be produced: Dan. Pr. 1844, n. (*k*)

Once in the London Gazette ;
And once in each of three successive (*o*) weeks in "The Times" newspaper, and in "The Daily Telegraph" newspaper).

R. M., Chief Clerk.

2059.

Notice of the application (*p*).

In Chancery.

(*Set out the full title, as in the petition* (*q*).)

Pursuant to the above-mentioned Acts of Parliament, and the Consolidated General Order of this Court in that behalf, Notice is hereby given, that on the —— day of ——, 187—, A. B. (*Set out the names, addresses, and descriptions of the petitioners* (*r*) *: as in the petition*), presented their petition to the Lord High Chancellor of Great Britain (to be heard before his honour the Vice-Chancellor Sir ——) :

Or, presented their petition to his lordship the Master of the Rolls :

praying that (*Set out the substance of the prayer ; as thus :* the hereditaments above mentioned may be sold by this Court under the provisions of the above-mentioned Acts, and that all proper inquiries may be made, and directions given, for effecting such purpose ; and that the costs of, and incident to, the said petition may be provided for).

And notice is also hereby given, that the petitioners may be served with any order of the Court, or of the Judge in Chambers, or notice, relating to the subject of the said petition, at the offices of Messrs. E. and F., situate at ——, in the county of —— (*r*).

Dated this —— day of ——, 187—.

E. & F.,
Solicitors for the petitioners.

2060.

Notice of the day appointed for hearing the petition (*t*).

This petition will be placed in the paper of petitions of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor Sir ——], on ——, the —— day of ——, 187—.

(*o*) It seems the weeks need not be successive ; but a sufficient interval must elapse between the several insertions : *Browne* v. *Pennefather*, 4 N. R. 221, V. C. S.; Dan. Pr. 1844, n. (*q*).

(*p*) See Dan. Pr. 1843. The notice is not settled at Chambers, nor signed by the Chief Clerk. The direction signed by him on the petition must be produced to the printer of the Gazette, as his authority to insert the notice. The notice is usually signed by, or in the name of, the petitioner's solicitor : Dan. Pr. 1844.

(*q*) As to the title of the notice, see Ord. XLI. 15 ; Dan. Pr. 1844 ; and as to the effect of a variance, see *ib.*

(*r*) See Ord. XLI. 14 ; Dan. Pr. 1843.

(*t*) See Dan. Pr. 1845. This notice is indorsed on each copy petition for

2061.
Motion paper, for leave to be heard on the application (*u*).

Formal parts: see ante, No. 53.
on the part of A. W., of (*residence and addition*), that he may be at liberty to appear, and be heard in opposition to [*Or*, in support of], the application intended to be made in this matter by the petition of A. B. and others, presented on the ——, 187—.

2062.
Application to be furnished with a copy of the petition, in like case (*x*).

In Chancery.
(*Short title.*)
I request to be furnished with a copy of the petition of A. B. and others in this matter; and I undertake to pay all proper charges for the same (*y*). Dated (*&c.: Conclude as in* No. 54, *ante*).

2063.
Summons, for the appointment of a guardian of an infant, to make, or to consent to, an application: where the summons is issued before the petition is presented (*z*).

In Chancery.
In the matter of A. B., an infant, by C. D., his next friend;
And in the matter of (*Set out the title of the intended petition*).
Let (*&c.: Continue as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of the above named infant

service, and served therewith, where a day for hearing the petition is not named in the fiat thereon. For the mode of answering petitions under the Settled Estates Acts, and setting the petitions down for hearing, and serving same, see Dan. Pr. 1843, 1845; Ord. XLI. 20. As to indorsing notice of order made on the hearing of the petition, see Ord. XLI. 24; Dan. Pr. 1847. As to the fees and allowances to officers and solicitors, see Ord. XLI. 25; and *ante*, No. 1545, *et seq.*

(*u*) See 19 & 20 Vic. c. 120, s. 20; Dan. Pr. 1843, 1845, 1846. For order for leave to appear in opposition, see *Re Merry*, V. C. M. 3 Dec. 1866, Reg. Lib. B. 2449; and see Seton, 529, No. 4. In the case cited, the order was made on reading a local newspaper containing notice of the intended application. As to the time allowed for making the motion, and as to service of the order on the petitioner, see Ord. XLI. 17; Dan. Pr. 1846.

(*x*) See Ord. XLI. 18; Dan. Pr. 1846; and *ante*, No. 1544.

(*y*) The charge is to be after the rate of fourpence per folio: Ord. XLI. 19; Dan. Pr. 1846.

(*z*) See 19 & 20 Vic. c. 120, s. 36; Ord. XLI. 23; Regul. 8 Aug. 1857, r. 21; Dan. Pr. 1851, 1852. Where the application is made before the petition is presented, it must be by an originating summons; and a duplicate be filed in the Record and Writ Clerks' office, in the usual way; but where it is not made till after the petition is presented, an ordinary summons is sufficient. In practice, it is not usual to issue the summons till the petition has been presented. The application is made *ex parte*: Ord. XLI. 23. For the practice as to originating and ordinary summonses, see Dan. Pr. 1050, *et seq.*; and *ante*, No. 1123, *et seq.*, and notes thereto. In the case of an adult person of unsound mind, not so found, the practice is analogous to that followed in the case of an infant: see Dan. Pr. 1851, n. (*z*).

A. B., by the above named C. D., of (*residence and addition*), his next friend (*a*), that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for the purpose of making an application on behalf of the said infant

Or, If the infant is not to be a petitioner, say: for the purpose of consenting on behalf of the said infant to an application by (*Name the intended petitioners*)

to this Court, under the provisions of the above mentioned Act.

If the infant is tenant in tail, add (*b*): And that such guardian may be at liberty to make [*Or*, consent to] such application accordingly.

Dated (*&c.: Conclude as in* No. 1123, *ante: omitting the foot note*).

2064.

The like: where the summons is issued after the petition is presented (*c*).

In Chancery.

In the matter of (*Set out the title of the petition presented*):

And in the matter of A. B., an infant, by C. D., his next friend.

Let (*&c.: Continue as in* No. 60, *ante, to* noon), on the hearing of an application on the part of the above named infant A. B., by the above named C. D., of (*residence and addition*), his next friend, that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for the purpose of making, on behalf of the said infant, the application

Or, if the infant is not a petitioner, say: for the purpose of consenting, on behalf of the said infant, to the application proposed to be made to this Court by the petition presented by (*Name the petitioners*), on the —— day of ——, 187—, under the provisions of the above mentioned Act.

If the infant is tenant in tail, add (*b*): And that such guardian

(*a*) Where the application is made by an originating summons, the written authority of the next friend to use his name is filed with the duplicate summons: Dan. Pr. 1852, n. (*e*). For form of authority, see *ante*, Nos. 1975, 1976.

(*b*) By adopting this course, the expense and delay of a subsequent application for leave will be saved: see Dan. Pr. 1853.

(*c*) See 19 & 20 Vic. c. 120, s. 36; Ord. XLI. 23; Regul. 8 Aug. 1857, r. 21; Dan. Pr. 1851, 1852; and notes to No. 2063, *ante*. For like order to make an application, see *Re Gunter*, V. C. W. at Chambers, 17 Dec. 1866, Reg. Lib. A. 2690; and to consent to an application, *Re Marquis of Cholmondeley*, V. C. S. at Chambers, 19 Dec. 1866, Reg. Lib. A. 2767; *ante*, No. 2054. On the hearing of the summons, the original petition: or, in the case of a respondent, the copy served: should be produced, and be entered as read.

may be at liberty to make (*e*) [*Or*, consent to (*f*)] such application accordingly.

Dated (*&c. : Conclude as in* No. 60, *ante*).

2065. Affidavit in support of application for the appointment of a guardian to make, or to consent to, an application on behalf of an infant (*g*).

Formal parts : see ante, No. 9.

1. *State the infant's age ; as thus :* The above named infant A. B. is of the age of —— years.

2. *State whether the infant has any parent, testamentary guardian, or guardian appointed by the Court of Chancery ; as thus :* The said A. B. has neither a parent, nor a testamentary guardian, nor a guardian appointed by this honourable Court.

3. *State where, and under whose care, the infant is residing ; and at whose expense he is maintained ; as thus :* The said A. B. is now residing with, and under the care of, his maternal uncle C. D., at (*State where*) ; and is maintained at the expense of the said C. D.

4. *State in what way the proposed guardian is connected with the infant ; and why proposed ; and how qualified to be appointed ; as thus :* The said C. D., the person proposed to be appointed the special guardian of the said A. B., for the purpose of (*State what : as in the summons*), is the nearest relation of the said A. B. ; and is proposed as such guardian because the said A. B. is under his care and protection, and is maintained at his expense. The said C. D. is also a person of good business habits, and fully competent to judge of the propriety of making [*Or*, consenting to] the said application, on behalf of the said A. B.

5. *State whether the proposed guardian has any interest in the intended application ; and, if he has, the nature of such interest, and whether it is or not adverse to the interest of the infant ; as thus :* The said C. D. has no interest whatever in the subject matter of the application proposed to be made by the said petition.

6. *Show the consent of the proposed guardian to act ; as thus :* I saw the said C. D. sign the paper writing now produced and shown to me, and marked A. (*h*), and purporting to be his consent to act as such guardian as aforesaid. The name or signature "——," set and subscribed to the said paper writing, is of the proper handwriting of the said C. D.

Or, I am well acquainted with the handwriting of the said C. D. : having seen him write. The name or signature "——," set and subscribed to the paper writing now pro-

(*e*) For order in like case, see *Re Wilkinson*, M. R. at Chambers, 13 Dec. 1869, Reg. Lib. B. 3180.

(*f*) For order in like case, see *Re Rimington*, V. C. J. at Chambers, 26 June, 1870, Reg. Lib. B. 1689.

(*g*) See Regul. 8 Aug. 1857, r. 21 ; Dan. Pr. 1852.

(*h*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

duced, *&c.*, and purporting to be, *&c.* (*as above*), is of the proper handwriting of the said C. D.

7. *State the nature of the intended application to the Court* (*i*); *as thus:* The object of the application proposed to be made by the said petition is (*State, succinctly, what; as thus:* to obtain an order for the sale, under the direction of this honourable Court, of the hereditaments described in the title or heading of the said petition).

8. *Show means of knowledge.*

2066.

Consent to act of the proposed guardian of an infant (*k*).

In Chancery.

(*Title*).

I, C. D., of (*residence and addition*), consent to be appointed special guardian of the above named infant A. B., for the purpose of (*State what: as in the summons*). Dated this —— day of ——, 187—.

C. D.

2067.

Summons, for leave for the guardian, or committee, of a tenant in tail to make, or to consent to, an application (*l*).

In Chancery.

In the matter of A. B., an infant [*Or*, a person of unsound mind not so found].

And in the matter of (*Set out the title of the petition*).

Let (*&c.: Continue as in* No. 60, *ante, to* noon), on the hearing of an application on the part of C. D., of (*residence and addition*) the testamentary (*m*) guardian [*or as may be*] of the above-named infant A. B.,

Or, the committee of the estate of the above-named A. B., that the said C. D. may be at liberty, on behalf of the said A. B., to make the application

Or, if the infant, or lunatic, is not a petitioner, say: may be at liberty, on behalf of the said A. B., to consent to the application

proposed to be made by the petition of (*Names of the petitioners*), presented on the —— day of ——, 187—, under the provisions of the above-mentioned Act. Dated (*&c.: Conclude as in* No. 60, *ante*).

(*i*) It seems also now the practice to require evidence that the object of the proposed application will be beneficial to the infant: Dan. Pr. 1852. Evidence to this effect will, of course, be required to be produced on the hearing of the petition.

(*k*) See Dan. Pr. 1852. For form of affidavit verifying the signature, see *ante*, No. 2065, par. 6. Where the intended guardian makes an affidavit in support of the application, he should state therein his consent to act: so as to save the expense of a separate consent, and affidavit verifying it.

(*l*) See 19 & 20 Vic. c. 120, s. 36; Ord. XLI. 23; Regul. 8 Aug. 1857, r. 22; Dan. Pr. 1852, 1853; and *ante*, Nos. 2063, 2064. For order in like case, see *Re Du Cane*, M. R. at Chambers, 19 Jan. 1864, Reg. Lib. A. 141; and see Seton, 528, No. 2.

(*m*) See *Re Verelst*, M. R. at Chambers, 11 May, 1867, Reg. Lib. B. 1228.

2068.
Affidavit of guardian, or committee, in support (*n*).

Formal parts : see ante, No. 9.

1. I am the testamentary guardian [*or as may be*] of the above-named A. B.

Or, 1. I am the committee of the estate of the above-named A. B.

2. I am aware of the nature and object of the application proposed to be made to this honourable Court by the petition of (*Names of petitioners*), presented in this matter on the —— day of ——, 187—, under the provisions of the above-mentioned Act.

3. I have fully considered, on behalf of the said A. B., the object of the said application ; and I believe it to be proper, and for the benefit of the said A. B., that the said application should be made [*Or*, should be consented to] on his behalf.

4. *State means of knowledge.*

2069.
Minute of examination of a married woman, by the Judge at chambers, as to her consent (*o*).

Master of the Rolls [*Or*, Vice-Chancellor——], at Chambers. } ——, 187—.

The petitioner A. B., the wife of C. B.,

Or, The within-named A. B., the wife of C. B.,

was this day examined by the Judge in person, apart from the said C. B., her husband, touching her knowledge of the nature and effect of the application intended to be made by the within petition ; and the Judge ascertained from her that she freely desired to make

Or, if she is not a petitioner, say : that she freely desired to consent to

such application.

R. M., Chief Clerk.

2070.
Summons to appoint a special examiner of a married woman, as to her consent (*p*).

Formal parts : see ante, No. 60.

on the part of A. B., the wife of C. B., by X. Y., of (*residence and addition*), her next friend, that E. F., of (*residence and addition*), a solicitor of this Court (*q*), may be appointed to examine the said A. B., apart from the said C. B., her husband, touching her

(*n*) See Regul. 8 Aug. 1857, r. 22 ; Dan. Pr. 1853. On the hearing of the summons, such other evidence, if any, should be adduced, as the circumstances of the case may require, to show the propriety of the application, so far as the infant or lunatic is concerned ; and the petition should be produced : *ib.*

(*o*) See 19 & 20 Vic. c. 120, ss. 37, 38 ; Dan. Pr. 1853, 1854. The minute should be indorsed on the original petition, and signed by the Chief Clerk. As to the stage at which the examination should be taken, and for cases in which it has been dispensed with, see Dan. Pr. 1854.

(*p*) See 19 & 20 Vic. c. 120, ss. 37, 38 ; Dan. Pr. 1854, 1855.

(*q*) As to the person to be appointed, where the married woman is out of the jurisdiction, see 21 & 22 Vic. c. 77, s. 6 ; Dan. Pr. 1854.

knowledge of the nature and effect of the application intended to be made by the petition of (*Names of petitioners*), presented in this matter on the ——, 187—, under the provisions of the above mentioned Act, and to ascertain whether she freely desires to make such application (*r*).

Or, if the married woman is not a petitioner, say: and to ascertain whether she freely desires to consent to such application (*s*).

2071.

Motion paper, for the like (*t*).

Formal parts: see ante, No. 53.

To move on behalf of A. B. (*Continue as in* No. 2070, *ante, to the end*).

2072.

Affidavit in support of application to appoint a special examiner (*u*).

Formal parts: see ante, No. 9.

1. I know and am well acquainted with E. F., of (*Place of business*), one of the solicitors of this honourable Court, and the person proposed to be appointed to examine A. B., the wife of C. B., apart from her husband, touching her knowledge (*&c.: as in the summons*).

2. The said E. F. is not professionally concerned in the subject matter of the said petition, either for the petitioners, or any of them, or for any other of the parties interested in the object thereof.

3. I believe the said E. F. to be a fit and proper person to be appointed to examine the said A. B., for the purpose aforesaid.

2073.

The examination (*x*).

A.

In Chancery.

(*Title, as in order directing the examination.*)

The examination of A. B., the wife of C. B., in the order made in this matter dated the —— day of ——, 187— (*Order directing the examination*), respectively named: taken pursuant to the said order.

(*r*) For order in like case, see *Re Reveley*, V. C. S. at Chambers, 8 Nov. 1870, Reg. Lib. B. 2706.

(*s*) For order in like case, see *Re Rimington*, V. C. B. at Chambers, 16 Nov. 1870, Reg. Lib. B. 2751.

(*t*) See notes to No. 2070, *ante*. The application is usually made by summons.

(*u*) See Dan. Pr. 1855. Where the examination is to be taken out of the jurisdiction, the affidavit must be varied accordingly.

(*x*) See 19 & 20 Vic. c. 120, ss. 37, 38; Dan. Pr. 1854, 1855. The examination should be written on the first side of a sheet of foolscap; and the examiner's certificate (see *post*, No. 2074) should follow thereunder.

I, the said A. B., the wife of the said C. B., having been this day examined secretly and apart from my said husband, by E. F., in the said order named, touching my knowledge of the nature and effect of the application intended to be made to the High Court of Chancery by the petition of G. H. and others, as in the said order mentioned, for answer thereto say: that I am aware of the nature and effect of the said intended application; and that I freely desire to make such application.

Or, if she is not a petitioner, say: freely desire to consent to such application.

As witness my hand this —— day of ——, 187—.

A. B.

Witness to the signature of the said A. B.,
X. Y., of (*residence and addition*).

B.

2074. Certificate of examination (*z*).

To the Right Honourable the Lord High Chancellor of Great Britain [*Or*, Master of the Rolls (*a*)].

I, the undersigned E. F.: being the examiner named in the order dated the —— day of ——, 187—, above mentioned: humbly certify to your lordship, that, pursuant to the said order, I have this day examined the above named A. B., the wife of the above named C. D., secretly and apart from her said husband, touching her knowledge of the nature and effect of the application intended to be made by the petition of G. H. and others, as in the said order mentioned, and whether she freely desired to make such application.

Or, if she is not a petitioner, say: freely desired to consent to such application;

and I have taken such examination in writing, as above set forth.

I further certify that, at the time of such examination, I read over the said order to the said A. B., and explained to her the purport and effect thereof; and I was satisfied that she was aware of the nature and effect of the application intended to be made by the said petition, and that she freely desired to make the same.

Or, if she is not a petitioner, say: freely desired to consent to the same.

Witness to the signature of the said E. F.,
X. Y.

E. F.

(*z*) See Dan. Pr. 1855; and *ante*, No. 2073, n. (*x*).

(*a*) See *ante*, No. 1908, n. (*a*).

2075.

Affidavit, verifying the signatures to the examination and certificate (*b*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I saw A. B., the wife of C. B., in the order made in this matter dated the —— day of ——, 187— (*Order directing the examination*), respectively named, sign the paper writing, marked A., hereunto annexed, and purporting to be her examination taken pursuant to the said order (*c*).

2. On the said —— day of ——, I also saw E. F., the examiner named in the said order, sign the paper writing, marked B., hereunto annexed, and purporting to be his certificate of such examination.

3. The signature "——," set and subscribed to the said examination marked A., is of the proper handwriting of the said A. B.

4. The signature "——," set and subscribed to the said certificate marked B., is of the proper handwriting of the said E. F.

5. The signature "——," set and subscribed to the attestation at the foot of the said examination and certificate respectively, is of my proper handwriting.

2076.

Memorandum of identity of examination and certificate (*d*).

The same as No. 1910, *ante*.

2077.

Summons, for leave for a petitioner to appear separately from his co-petitioners (*e*).

Formal parts: see ante, No. 60.

on the part of F. L., one of the petitioners named in the order dated the —— day of ——, 187—, made on petition in these matters, that he may be at liberty to appear separately, at his own expense, in all future proceedings in these matters; and that notice of all such proceedings may be given to Mr. G. R., of (*Place of business*), as the solicitor of the said F. L.

(*b*) See Dan. Pr. 1855. The affidavit should be written on the third or fourth side of the sheet of paper containing the examination and certificate; but it may be written on a separate sheet of paper. The examination, certificate, and affidavit are filed at the Record and Writ Clerks' office: whence an office copy of the three documents is procured for use: Dan. Pr. 1855.

(*c*) As to verifying the signature of the married woman, see Dan. Pr. 1855, n. (*i*).

(*d*) See Dan. Pr. 1855. The memorandum should be written on the margin of the first page of the examination and certificate.

(*e*) For order in like case, see *Re Lloyd*, V. C. S. at Chambers, 26 Nov. 1866, Reg. Lib. B. 2671.

2078. Notice of motion, under 27 & 28 Vic. c. 45, to strike out direction in an order that leases be settled by the Judge (*f*).

Formal parts: see ante, No. 55.

on the part of (*Names of petitioners*), the petitioners named in the order made in this matter dated the ——day of ——, 187—, that the words following; that is to say: (*Set them out from the order; as thus:* "and in addition to the conditions required by the said Act, are to contain such covenants, conditions, and stipulations as the Judge shall approve; and such leases are to be settled by the Judge,") may be struck out of the said order; and that the said order may be read as if such words had never been contained therein.

Section VI.—Parliamentary Deposits Act (*g*).

2079. Petition, for investment of deposit money (*h*).

In the matter of *Ex parte* the undertaking of the A. B. Railway bill [*or as may be*].

And in the matter of the Act 9th and 10th Victoria, chapter 20, intituled "An Act to amend an Act of the second year of her present Majesty for providing for the custody of certain monies paid, in pursuance of the standing orders of Parliament, by subscribers to works or undertakings to be effected under the authority of Parliament."

Address to the L. C., or M. R.: see ante, No. 56; *and names, residences, and additions, of the petitioners.*

Showeth as follows:

1. In the present session, your petitioners introduced a bill into Parliament, for authority to construct a railway from C. to D. [*or as may be*].

(*f*) See 27 & 28 Vic. c. 45, s. 2; Dan. Pr. 1838. For orders in like case, see *Re Titley*, M. R. 20 July, 1864, Reg. Lib. B. 1852; *Re Simcox*, V. C. S. 28 April, 1870, Reg. Lib. B. 1100 (on application of respondents).

(*g*) 9 & 10 Vic. c. 20; see Dan. Pr. 1856—1861. For the Standing Orders of Parliament as to clauses to ensure the completion of public works, see Dan. Pr. 1859—1860; and see the Railways Act, 1867 (30 & 31 Vic. c. 127), s. 34; and the Abandonment of Railways Act, 1869 (32 & 33 Vic. c. 114), s. 6; Dan. Pr. 1860, 1861.

(*h*) See 9 & 10 Vic. c. 20, ss. 2—4; Dan. Pr. 1857. For the practice as to the payment of deposits into Court, see Dan. Pr. 1636, *et seq.*; and as to investments, *ib.* 1639, *et seq.* As to transferring stock, instead of paying in money, see 9 & 10 Vic. c. 20, s. 3; Dan. Pr. 1857; and for the practice generally, as to transfers into Court, see *ib.* 1636, *et seq.* For the practice as to petitions in general, see *ib.* 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto.

2. Pursuant to the standing orders of Parliament, and of a warrant or order issued in pursuance thereof, your petitioners on or about the ——, 187—, paid the sum of £——, into the bank, in the name, and with the privity, of the Accountant-General of this honourable Court, to the credit of *Ex parte* the undertaking of the A. B. Railway bill [*or as may be*].

3. The said sum remains in the bank on the said credit.

Your petitioners therefore humbly pray, that the said sum of £——, cash in the bank on the credit of (*&c. as above*), may be laid out in bank 3*l.* per cent. annuities [*or as may be*]; and that the interest and accumulations of interest thereon may be laid out in like manner.

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58.)

2080.

Petition, for repayment of a cash deposit, or retransfer of stock purchased therewith (*i*).

Proceed as in No. 2079, *ante, to end of par.* 2.

3 *If the deposit has not been invested, add par.* 3, No. 2079.

But, if it has been invested, say: Pursuant to an order dated the ——, 187—, the said £—— was afterwards laid out in bank 3*l.* per cent. annuities; and the same, with the interest and accumulations of interest thereon, is now represented by the sums of £—— like annuities, and £—— cash remaining on the credit of the said account [*or as may be*].

4. *State the ground for requiring repayment; as thus:* The bill referred to in paragraph 1 of this petition has received the Royal Assent. The Act founded thereon is the (*Set out the short title*); and the said Act authorises the said undertaking to be made.

Your petitioners therefore humbly pray, that the said £—— bank 3*l.* per cent. annuities, and £—— cash, remaining on the credit of (*State what*), and any interest to accrue on the said bank annuities, may be respectively transferred and paid to your petitioners.

Or, to E. F., of (*residence and addition*), and G. H., of, *&c.*, for and on behalf of your petitioners; and whom your petitioners hereby appoint for that purpose.

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*i*) See 9 & 10 Vic. c. 20, s. 5; Dan. Pr. 1858. For orders in like case, see *Re Barry Railway Company*, V. C. W. 21 Dec. 1866, Reg. Lib. A. 2800; *Re Peterborough Water Bill*, V. C. S. 1 Aug. 1867, Reg. Lib. B. 2000.

2081.

Affidavit verifying signature of Chairman of Committees of House of Lords, Speaker, or Deputy Speaker, of House of Commons, or Treasury Solicitor (*k*).

Formal parts : see ante, No. 9.

1. I saw the Right Honourable the Lord Redesdale, Chairman of Committees of the House of Lords,

Or, the Right Honourable J. E. D., Speaker of the House of Commons,

Or, W. D., esquire, Deputy Speaker of the House of Commons (*l*),

Or, J. G., esquire, solicitor to the Lords Commissioners of Her Majesty's Treasury,

sign the certificate or paper writing now produced and shown to me, and marked A (*m*), and purporting to be (*State shortly what ; as thus :* a certificate dated the ——, 187—, that on the —— day of ——, the Royal Assent was given to an Act of Parliament, intituled, An Act, *&c.*).

Or, 1. I know and am well acquainted with the handwriting of the Right Honourable (*&c.* ; *as above*) : having seen him write.

2. The name or signature "——," set and subscribed to the said paper writing marked A.,

Or, to the paper writing now produced, *&c.*, and purporting to be, *&c.* (*as above*),

is of the proper handwriting of the said Lord Redesdale [*or as may be*].

2082.

Affidavit verifying the signatures to a petition (*n*).

Formal parts : see ante, No. 9.

1. On the —— day of ——, 187—, I saw A. B. and C. D., respectively named in the paper writing now produced and shown to me, and marked A. (*m*), and purporting to be their petition in this matter, duly sign the said petition.

2. The names or signatures "——," and "——," respectively set and subscribed at the foot of the said petition, are of the respective proper handwriting of the said A. B. and C. D.

(*k*) See Dan. Pr. 1858; *Re Barry Railway Company*, V. C. W. 21 Dec. 1866, Reg. Lib. A. 2800; see, however, Seton, 1103, No. 1, as to proving the signatures of the Chairman of Committees, or Speaker, or Deputy Speaker.

(*l*) As to the Deputy Speaker, see *Ex parte Stocksbridge Railway Bill*, Law Rep. 2 Eq. 364 : 12 Jur. N. S. 465, M. R. ; Dan. Pr. 1858, n. (*d*).

(*m*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*n*) See Dan. Pr. 1858; *ib.* 1859, n. (*c*); and *Re London, Chatham & Dover Railway Company*, V. C. K. 20 July, 1866.

Section VII.—Lands Clauses Consolidation Act, 1845 (*o*).

2083.

Request for a direction to pay into Court the purchase money or compensation of persons under disability (*p*).

In Chancery.

In the matter of the (*Short title of the Special Act*).

The Accountant-General is requested: pursuant to the Lands Clauses Consolidation Act, 1845, and the above mentioned Act, incorporating the same: to prepare a direction, enabling the —— Company to pay into the Bank of England the sum of £ ——: to be placed to his account there, and to the credit of *Ex parte* the —— Company: In the matter of (*Short title of Special Act*). Dated this —— day of ——, 187—.

A. & B., of (*Place of business*),
Solicitors for the said company.

2084.

Direction to pay in thereon (*q*).

I do hereby certify that, pursuant to the Lands Clauses Consolidation Act, 1845, and the (*Short title of the Special Act*), the —— Company are to pay into the Bank of England the sum of £——: which is to be placed to my account as Accountant-General, and to the credit of (*&c.: as above*); and a receipt is forthwith to be brought me from one of the cashiers of the Bank for payment thereof: as directed by the Act of Parliament.

W. R.
£——. A. G.

2085.

Petition, for interim investment of deposited money, and payment of income to a tenant for life (*s*).

In Chancery.

(*Branch of the Court* (*r*)).

In the matter of (*Describe the particular will or settlement affecting the lands; as thus:* the will of A. B. deceased).

And in the matter of the (*Short title of the Special Act*).

(*o*) 8 & 9 Vic. c. 18; amended by the Lands Clauses Consolidation Acts, 1860 (23 & 24 Vic. c. 106), and 1869 (32 & 33 Vic. c. 18); and see Dan. Pr. 1861—1886; and Seton, 1063, *et seq.*

(*p*) Dan. Pr. 1863. For the practice and mode of payment into the bank, see *ib.* 1636, *et seq.*, 1863. As to depositing money in the bank during vacations, see 8 & 9 Vic. c. 18, s. 88; Dan. Pr. 1885.

(*q*) See Dan. Pr. 1863.

(*r*) See Ord. VI. 6; and *ante*, No. 197.

(*s*) See Dan. Pr. 1866, 1867. For the practice as to petitions in general, see *ib.* 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto. As to interim investments, see 8 & 9 Vic. c. 18, s. 70; Dan. Pr. 1866. As to who may petition, and the persons to be served, see Dan. Pr. 1866. For forms of orders, see Seton, 1069, 1070. As to the application, under 8 & 9 Vic. c. 18, s. 69, of the money deposited: (1) In the purchase or redemption of the land tax: see

And in the matter of the Lands Clauses Consolidation Act, 1845 (*t*).

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of C. D., of (*residence and addition*).

Showeth as follows:

State, succinctly, the interest of the petitioner in the land taken; as thus: 1. The above named A. B., by her last will dated ——, 187—, devised all her real estate whatsoever and wheresoever unto your petitioner, for his life; and after his decease, to all the sons of your petitioner who should be living at the time of his death, as tenants in common in fee.

2. The said testatrix died on, *&c.*, without having altered or revoked her said will; and E. F., the sole executor thereof, duly proved such will in the Principal Registry of Her Majesty's Court of Probate on, *&c.*

State how the settled land has been taken under a Parliamentary power; as thus: 3. By the M. Railway Act, 1866: which incorporated the Lands Clauses Consolidation Act, 1845: the M. Railway Company were authorised to make the railway therein mentioned.

4. The said Company, in exercise of the powers vested in them by the said Acts, or one of them, gave notice to your petitioner that they required, for the purposes of their said undertaking, certain lands situate at, *&c.*, forming part of the real estate so devised to your petitioner for his life as aforesaid; and that the said Company desired to treat for the purchase thereof.

5. Your petitioner not being able to agree with the said Company as to the amount to be paid as the purchase money or compensation for the said lands, the sum of £ A. was duly settled and determined by arbitration to be the amount thereof.

Dan. Pr. 1863; and form of order, Seton, 1063, No. 1; (2) In payment or discharge of incumbrances: see Dan. Pr. 1863; and forms of orders, Seton, 1063, 1064, Nos. 2, 3; (3) In the purchase of other lands: see Dan. Pr. 1864; and forms of orders, Seton, 1064, 1067; and see *post*, No. 2086; (4) In replacing buildings, or in permanent improvements: see Dan. Pr. 1864; and forms of orders, Seton, 1067, 1068, Nos. 8—10; and (5) In payment to an absolute owner: see Dan. Pr. 1865. As to the application of money payable under the 8 & 9 Vic. c. 18, s. 73, under contracts with persons not absolutely entitled, see Dan. Pr. 1870; and forms of orders, Seton, 1068—1071, Nos. 11, 14, 16; and under s. 74, in respect of leases or reversions, see Dan. Pr. 1871; and forms of orders, Seton, 1071, Nos. 17, 18. As to payment in and application of money, where the parties interested refuse to accept the money, or to show a title, or cannot be found, see 8 & 9 Vic. c. 18, ss. 76—78; Dan. Pr. 1872—1874. As to treating the party in possession as owner, see 8 & 9 Vic. c. 18, s. 79; Dan. Pr. 1874. As to entry on lands before purchase, on making a deposit or giving a bond, see 8 & 9 Vic. c. 18, ss. 85, 87; Dan. Pr. 1884, 1885. Section 85 is amended by the Railway Companies Act, 1867 (30 & 31 Vic. c. 127), s. 36; and see *ib.* s. 37, as to the mode of settlement of the costs of an arbitration as to disputed compensation.

(*t*) As to the title of the petition, see Dan. Pr. 1768.

State the payment into Court; as thus: 6. On the ——, 187—, the said Company paid the said sum of £ A. into the Bank of England, in the name, and with the privity of the Accountant-General of this honourable Court, to the credit of (*State the title of the account correctly, from the Accountant-General's certificate*): which sum is now standing to the like credit.

State the conveyance to the company, if executed, or other ground for the application; as thus: 7. By an indenture dated, *&c.*, and made between your petitioner of the one part, and the said M. R. Company of the other part, your petitioner conveyed the said lands to the said Company, their successors and assigns.

Your petitioner therefore humbly prays as follows:

1. That the said sum of £ A. cash in the bank to the credit of (*State what*) may be laid out in the purchase of bank 3*l.* per cent. annuities, in trust in the said matter, to an account to be entitled "The account of the devisees under the will of A. B." [*or as may be*].

2. That the interest to accrue, during the life of your petitioner C. D., on the said bank annuities, may be from time to time paid to your petitioner C. D., or to his legal personal representative, until further order.

3. That, pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845 (*u*), the said M. R. Company may be ordered to pay to your petitioner his costs, as thereby provided for: including therein all reasonable charges and expenses of, and incident to, the purchase of the said lands by the said Company, and of the conveyance thereof to them, and of this application, and of all proceedings relating thereto [*or as may be*]: such costs, charges and expenses to be taxed by the Taxing Master, in case the parties differ.

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note,* No. 58).

(*u*) As to the costs payable under section 80, see Dan. Pr. 1874—1882. For form of order under section 80, see Seton, 1072, No. 19; and see Morgan & Davey, 189, *et seq.* For precedents of bills of costs, under the Lands Clauses Act, see Morgan & Davey, 484, *et seq.*; and for the method of taxation of costs, see Dan. Pr. 1307, *et seq.*; and *ante*, No. 1574, *et seq.*, and notes thereto. As to costs under special Acts anterior to the 8 & 9 Vic. c. 18, see Dan. Pr. 1886; see also Seton, 1089—1090; Morgan & Davey, 203, 204.

2086.
Petition, to approve of investment in land of deposited money (*x*).

Proceed as in No. 2085, *ante, to* as follows :

1. *State, succinctly, the interest of the petitioner in the land taken; the taking of such land; the ascertainment and payment into Court of the purchase money or compensation; and the conveyance to the Company, &c.: see ante*, No. 2085, *par.* 1—7.

If the money has been invested, state so; as thus : 8. By an order dated the——, 187—, the said sum of £ A. was directed to be laid out in the purchase of bank 3*l.* per cent. annuities ; and the interest to accrue, during the life of your petitioner, on the bank annuities so to be purchased, was directed to be paid to him, or to his legal personal representative, until further order. Pursuant to the said order, the said £ A. was laid out by the Accountant-General in the purchase of £ B., bank 3*l.* per cent. annuities, and the same is now remaining on the credit of (*State what: as in the Accountant-General's voluntary certificate*).

State the investment proposed to be made; as thus : 9. Your petitioner, on behalf of the parties interested under the said will [*or as may be*], lately entered into an agreement : conditional on the approval thereof by this honourable Court : with G. H., of, *&c.*, dated, *&c.*, for the purchase from the said G. H., for the sum of £ C., of certain freehold hereditaments belonging to him situate at ——, and comprising about —— acres.

10. The said proposed purchase is a fit and proper investment for the sum of £ C., in accordance with the trusts of the said will [*or as may be*] ; and your petitioner is desirous that the same should be approved by this honourable Court on behalf of the persons interested under the said will [*or as may be*] ; and that the said sum of £ C. should be raised out of the said £ A. cash [*Or*, £ B. bank 3*l.* per cent. annuities].

Your petitioner therefore humbly prays, as follows :

1. That the said proposed purchase of the said hereditaments may be approved as a proper investment of the said sum of £ C.
2. That the usual inquiry may be ordered to be made as to the title to the said hereditaments.
3. That in case such title shall be approved, a proper conveyance of the said hereditaments, to the uses of the said will [*or as may be*], may be directed to be settled.
4. That, upon the due execution thereof by all proper parties, the said sum of £ C. may be directed to be paid, out of the said £ A. cash,

Or, may be directed to be raised out of the said sum of £ B. bank 3*l.* per cent. annuities ; and be paid

(*x*) See 8 & 9 Vic. c. 18, s. 69 ; Dan. Pr. 1862, 1864. For forms of orders, see Seton, 1064—1067. As to service of the petition, see Dan. Pr. 1868 ; and for the practice as to investments by the Court in the purchase of land, see Dan. Pr. 1117, *et seq.* ; and *ante*, No. 1268, *et seq.*, and notes thereto.

to such person or persons as shall be certified to be entitled to receive the same.

5. That

the residue of the said £ A. cash may be laid out in bank 3*l.* per cent. annuities, the account aforesaid; and that

the rents and profits of the said hereditaments, after the completion of the purchase thereof, and the interest to accrue on the residue of the said bank annuities, after the aforesaid sale thereout,

Or, to accrue on the bank annuities so to be purchased,

during the life of your petitioner, may from time to time be paid to your petitioner, or to his legal personal representative, until further order.

6. That, pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845, the said M. R. Company may be ordered to pay to your petitioner his costs, as thereby provided for: including therein all reasonable charges and expenses of and incident to the said investment in the purchase of the said hereditaments, and of this application, and of all proceedings relating thereto [*or as may be*]: such costs, charges and expenses to be taxed by the Taxing Master, in case the parties differ.

Or that (*&c.: Conclude as in* No. 57, *ante; and add foot note*, No. 58).

2087.

Summons, for payment of interest of interim investment to a succeeding incumbent (*y*).

Formal parts: see ante, No. 60.

on the part of C. D., of (*residence and addition*):

1. That out of the £ A., cash in the bank on the credit of (*Describe the account: as in the Accountant-General's voluntary certificate*), the sum of £ B. may be paid to E. F., the legal personal representative of A. B., in the order dated the ——, 187—, named, in discharge of the proportion which accrued between the —— day of ——, 187—, and the day of the death of the said A. B. on the ——, 187—, of the half year's interest which became due on the ——, 187—, on the £ C. bank 3*l.* per cent. annuities remaining on the credit of the like account.

2. That the sum of £ D., residue of the said £ A., and also the interest hereafter to accrue on the said £ C. bank 3*l.* per cent. annuities, may be from time to time paid to the applicant C. D., as rector of the parish of E. [*or as may be*], and to the rector of the said parish [*or as may be*] for the time being: to be verified by affidavit: until further order.

(*y*) See Dan. Pr. 1768. As to what applications under the Lands Clauses Act may be made by summons, see *ib.*

2088. Summons, for interim investment, and payment of income, of deposit made under the Courts of Justice Concentration (Site) Act, 1865 (*z*).

In Chancery.

(*Title, as in* No. 2085, *ante: describing the Special Act thus:* And in the matter of the Courts of Justice Concentration (Site) Act, 1865).

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon (*a*),) on the hearing of an application on the part of C. D., of (*residence and addition*):

1. That the sum of £ A., cash: being the purchase money for the fee simple [*or as may be*] of certain land and premises situate at ——, which has, pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, been paid into the bank, to the credit of *Ex parte* the Commissioners of Her Majesty's Works and Public Buildings: In the Matter of the Courts of Justice Concentration (Site) Act, 1865, and now forms part of the £ —— cash in the bank to the credit of such account [*or as may be*]: may be laid out in the purchase of bank 3*l.* per cent. annuities [*or as may be*], to the credit of *Ex parte* the Commissioners of Her Majesty's Works and Public Buildings: In the Matter of the Courts of Justice Concentration (Site) Act, 1865: The account of (*State the title of the proposed special account*).

2. That the interest to accrue, during the life of the applicant C. D., on the said annuities may from time to time be paid to the applicant C. D., or his legal personal representative, until further order.

3. That, pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845 (*b*), the said Commissioners may be ordered to pay to the applicant his costs, as thereby provided for: including therein all reasonable charges and expenses of and incident to the purchase of the said land by the said Commissioners, and the conveyance thereof to them, and of this application: such costs, charges and expenses to be taxed by the Taxing Master, in case the parties differ.

Or that such other order may be made in the premises as may seem meet.

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

(*z*) 28 & 29 Vic. c. 49, s. 22; Dan. Pr. 1868, n. (*y*). For order in like case, see *Ex parte Mayor, &c., of London,* M. R. 17 June, 1867, Reg. Lib. B. 1477. A similar jurisdiction at Chambers is given by the Public Offices Site Act, 1866 (29 & 30 Vic. c. 21), ss. 8, 21; The National Gallery Enlargement Acts, 1866 (29 & 30 Vic. c. 83), ss. 13, 24; and 1867 (30 & 31 Vic. c. 41), ss. 5, 17; and the Houses of Parliament Act, 1867 (30 & 31 Vic. c. 40), ss. 8, 20.

(*a*) The application is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.;* and see *ante,* No. 1123, *et seq.,* and notes thereto.

(*b*) As to this section, see *ante,* No. 2085, n. (*u*).

2089.

Affidavit as to the title of an applicant by petition or summons (*c*).

Formal parts : see ante, No. 9.

1. *Verify the title of the applicant ; and add :*

2. I am not aware of any right in any other person than myself, or of any claim made by any other person than myself, to the said sums of £ ——, bank 3*l.* per cent. annuities, and £ ——, cash (*or other sum proposed to be dealt with*), or any part thereof respectively [*Or, if the deponent is aware of any such right or claim, state or refer to, and except the same*].

2090.

Summons, for the appointment of a special guardian of an infant to convey or release land, or to appoint trustees to receive purchase money or compensation (*d*).

In Chancery.

In the matter of A. B., an infant, by C. D., his next friend.

And in the matter of the (*Title of the Special Act*).

And in the matter of the Lands Clauses Consolidation Act, 1845.

Let (*&c. : Continue as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of the above named infant A. B., by the above named C. D., of (*residence and addition*), his next friend : that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for (*State what ; as thus :*)

the purpose of selling and conveying, or releasing to the —— Company, pursuant to the seventh section of the Lands Clauses Consolidation Act, 1845, certain lands situate at ——, which the said A. B. is seised or possessed of, or entitled to [*Or*, has an estate or interest in]; and which lands are required by the said Company for the purposes of their above mentioned Act

Or, the purpose of nominating, under the seventy-first section of the Lands Clauses Consolidation Act, 1845, two trustees to receive the purchase money or compensation payable by the —— Company, for certain lands situate at (*&c. : as above*).

Dated (*&c. : Conclude as in* No. 1123, *ante*).

2091.

Petition of course, for taxation of a bill of costs, under section 83 (*e*).

In Chancery.

In the matter of (*Set out title of the Special Act ; as thus :* the Tooting, Merton, and Wimbledon Extension Railway Act, 1864).

(*c*) See Dan. Pr. 1867, 1874. As to when an affidavit of no adverse claim will be required, see Ord. XXXIV. 3 ; Reg. Regul. 15 Mar. 1860, r. 34 ; Dan. Pr. 872, 1657, 1867.

(*d*) See 8 & 9 Vic. c. 18, ss. 7, 71 ; Dan. Pr. 1869, 1870. The application is made by an originating summons : for the practice as to which see Dan. Pr. 1050, *et seq. ;* and see *ante,* No. 1123, *et seq.,* and notes thereto.

(*e*) As to the costs of conveyances, and taxation thereof, see 8 & 9 Vic. c.

And in the matter of the Lands Clauses Consolidation Act, 1845.

To the Right Honourable the Master of the Rolls.

The humble petition of the London and South Western Railway Company [*or as may be*].

Showeth as follows:

1. Your petitioners, under the powers vested in them by the said Acts of Parliament, have purchased certain lands in the county of S., of S. M., of (*residence and addition*), for the purposes of their said railway [*or as may be*].

2. Under the provisions of the last mentioned Act your petitioners are liable to pay to the said S. M. his costs of, and incident to, the conveyance of such lands to your petitioners.

3. The said S. M. has delivered to your petitioners his bill of costs.

4. Your petitioners and the said S. M. cannot agree as to the amount of the said bill of costs; and your petitioners are therefore desirous of having the same taxed, under the provisions of the said last mentioned Act.

Your petitioners therefore humbly pray, that it may be referred to the proper Taxing Master of this Court to tax the said bill: with all usual directions.

And your petitioner will ever pray, &c.

2092.

Order, on petition of course, for the taxation of a bill of costs, under section 83 (*f*).

Date—title—and allegations in the petition.

It was therefore prayed, and it is accordingly ordered, that it be referred to the proper Taxing Master of this Court to tax and settle the said bill; and that the petitioners, and also all other parties, do produce before the said Master, upon oath, as he shall direct, all books, papers, and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined touching the same matters, or any of them, as the said Master shall direct.

And it is ordered, that if one sixth part of such bill shall be disallowed on such taxation, the said Master do tax the petitioners their costs of such taxation; and if one sixth part of such bill shall not be disallowed on such taxation, the said Master do tax the said S. M. his costs of such taxation.

And it is ordered, that the said Master do certify the amount due in respect of the said bill: having regard to the costs of such taxation, so to be taxed as aforesaid.

18, ss. 81—83; Dan. Pr. 1883—1884. Forms 2091, 2092, can readily be adapted to a case where the party entitled to the costs petitions for the taxation.

(*f*) For orders in like case, see *Re Tooting, &c., Railway*, M. R. 15 Jan. 1867; *Re Liverpool Sanatory Amendment Act*, 1864, M. R. 26 Jan. 1867; *Re Monmouthshire Railway and Canal Act*, 1865, M. R. 14 Dec. 1869: all in Rolls' Lib.; and see Seton, 1073, No. 2.

SECTION VIII.—THE RAILWAY COMPANIES ACT, 1867 (*g*).

2093. Petition for the appointment of a receiver and manager (*h*).

In Chancery.

(*Branch of Court* (*i*).)

In the matter of the Beddgelert Railway Company; and in the matter of the Railway Companies Act, 1867 (*k*).

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of R. M. O., of (*residence and addition*), and W. H. L., of, *&c.*

Showeth as follows:

1. The Beddgelert Railway Company is a railway company duly incorporated by an Act of Parliament made and passed in the session of Parliament holden in the 28th and 29th years of the reign of Her present Majesty, cap. cccxxii., intituled An Act for (*Setting out title of the Act*).

2. By the 14th section of the said Act it was provided that the capital of the company should be £100,000 in 1000 shares of £100 each.

3. By the 24th section of the said Act it was provided that the works by that Act authorised comprised the following railways, and all proper stations, *&c.*: (*Here followed a description of the railways*).

4. By another Act of Parliament made and passed in the session, *&c.*, intituled, An Act, *&c.*, the said company were authorised to raise, by the creation and issue of new shares, or stock, in addition to the capital which they were then already authorised to raise, such amount of capital as they should think fit, not exceeding £40,000.

5. By the last mentioned Act the said company were empowered to construct a railway (*Describing same*).

6. The said company proceeded to construct the said railways and works authorised by the said Acts; and the same have been

(*g*) 30 & 31 Vic. c. 127; and see 31 & 32 Vic. c. 79, s. 1; 33 & 34 Vic. c. 103; Gen. Ord. in Chan. 24 Jan. 1868 (Law Rep. 3 Ch. xlii.); Dan. Pr. 1887—1901. As to solicitors' and Court fees under the Act, see Ord. 24 Jan. 1868, rr. 36, 37, and Sched. 1, 2; *ante*, No. 1564. As to orders made in Chambers under the Act, see Ord. 24 Jan. 1868, r. 33; Dan. Pr. 1900; and see Dan. Pr. 1066, 1067; and *ante*, Nos. 1194, 1195.

(*h*) *Re Beddgelert Railway Company:* Presented 25 May, 1870; and filed 8 June, 1870. As to petitions for the appointment of a receiver and manager, see the 30 & 31 Vic. c. 127, s. 4; Dan. Pr. 1887; and as to the general course of proceeding by petition, see Dan. Pr. 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto.

(*i*) See Ord. 24 Jan. 1869, r. 29; Dan. Pr. 1887; see also Ord. VI. 6; Dan. Pr. 324, 1452; and *ante*, No. 197.

(*k*) See Ord. 24 Jan. 1869, r. 29; Dan. Pr. 1887.

partially completed ; and a portion of the said railways has been entirely completed, and has been opened, and is now open, for traffic.

7. The petitioners, on the 12th day of November, 1868, obtained a judgment against the said railway company for the sum of £1502 13*s.* 5*d.* for debt, and £3 8*s.* for costs, in Her Majesty's Court of Exchequer of Pleas, in respect of a debt which became due to them from the company since the passing of the Railway Companies Act, 1867 ; and such judgment is still in force and unsatisfied.

8. The petitioners are desirous that a receiver and manager of the undertaking of the company may be appointed by this honourable Court.

Your petitioners therefore humbly pray :

1. That a receiver and manager of the undertaking of the Beddgelert Railway Company may be appointed by this honourable Court ; and that out of the monies which may come to the hands of such receiver, when appointed, and properly applicable for that purpose, the amount due to the petitioners by virtue of the said judgment may be paid to them.
2. That for the purposes aforesaid all proper directions may be given, accounts taken, and inquiries made.
3. That the said Railway Company may pay to the petitioners the costs of this application and consequent thereon.

Or that your lordship (*&c. : Concluding as in* No. 57, *ante*).

Note : It is intended to serve this petition on the Beddgelert Railway Company (*l*).

2094.

Order on the above petition (*m*).

Date—title—and introduction.

This Court doth order, that a proper person be appointed manager of the undertaking called the Beddgelert Railway Company, and of the works and property comprised therein ; and receiver of the tolls, rents, calls, and arrears of calls, and all other monies due or to become due or receivable by the company from

(*l*) See Ord. 24 Jan. 1868, r. 30 ; Dan. Pr. 1888. As to the service of petitions in general, see Dan. Pr. 1455, 1456.

(*m*) *Re Beddgelert Railway Company*, V. C. S. 3 June, 1870, Reg. Lib. A. 1314. The order was discharged by V. C. S. on 14 Jan. 1871, for insufficient service of the petition : see S. C., W. N. (1871), 3 : 19 W. R. 427; Dan. Pr. 1888. As to the form of the order on a petition in like case, see Ord. 24 Jan. 1868, r. 31 ; Dan. Pr. 1888.

or in respect of the said railway and undertaking, and of the works and property comprised therein. And out of such monies the said manager and receiver is to pay all expences of working the said railway.

And it is ordered that the said receiver and manager do from time to time pass his accounts and pay the balances which shall be certified to be due from him into the bank, with the privity of the Accountant-General, to the credit of the first above mentioned matter.

And it is ordered that the following inquiries be made, that is to say :

1. An inquiry what is due to the petitioners for principal, interest and costs, upon their judgment debt in the petition mentioned.

2. An inquiry whether there are any other and what debts of the said company ; and whether the same, or any and which of them, are incumbrances on the said undertaking, or the tolls and money arising therefrom, or any and what parts thereof respectively ; and how the said incumbrances were respectively created, and what are the rights and priorities of the persons for the time being interested therein.

Further consideration of the petition adjourned.—Liberty to apply.

2095.

Summons, for determination of question respecting an execution (*n*).

Formal parts: see ante, No. 60.

(*Set out the title of the cause or matter in which the execution in question was issued; and add:*)

And in the matter of the Railway Companies Act, 1867 (*o*).

Let (*&c.: Proceed as in* No. 60, *ante*, *to* noon) on the hearing of an application on the part of the above named plaintiff A. B. :

Or, of the above named defendants the —— Company—*or as may be:*

that (*State the question which has arisen, and to be submitted for the examination of the Judge, as to whether property of the company taken in execution is liable to be so taken notwithstanding the Act*).

Dated (*&c.: Conclude as in* No. 60, *ante*).

(*n*) See 30 & 31 Vic. c. 127, s. 5; Ord. 24 Jan. 1868, r. 32; Dan. Pr. 1888. As to the general course of proceeding by summons, see Dan. Pr. 1050—1054; and *ante*, No. 1122, *et seq.*

(*o*) As to the title of the summons, see Ord. 24 Jan. 1868, r. 32; Dan. Pr. 1888.

2096.
Formal parts of a Scheme of Arrangement (*p*).

In Chancery.
(*Branch of Court* (*q*).)
In the matter of the —— Railway Company;
And in the matter of the Railway Companies Act, 1867 (*r*).
Scheme of Arrangement between the above named —— Company and their creditors.

1.
2.
3. } (*Set out, in numbered paragraphs, the statements of the scheme, leading up to the proposal.*) (1). Statements.

The said company propose, as a scheme of arrangement between the said company and their creditors, the following terms; that is to say: (2). Proposal.

1. That, *&c.*
2. That, *&c.*

Sealed with the common seal of the —— company, this —— day of ——, 187—.

Seal.

2097.
Declaration as to inability of company to meet engagements (*s*).

In Chancery.
In the matter of the —— Railway Company;
And in the matter of the Railway Companies Act, 1867.
By virtue of, and in accordance with, the above mentioned Act,

(*p*) See 30 & 31 Vic. c. 127, s. 6; Dan. Pr. 1888, 1889. For form of a scheme *in extenso*, see *Re Bristol and North Somerset Railway Company*, Law Rep. 6 Eq. 448—451, V. C. G. The scheme must be printed on paper of the same size and description, and in the same style and manner, as bills are required to be printed; and every fifth line of each page of a printed scheme must be numbered; but a written scheme may be filed in the first instance (see *post*, No. 2100): in which case it must be written bookwise upon paper of the same size and description: Ord. 24 Jan. 1868, rr. 3, 9; and see *ib.* rr. 7, 8; Dan. Pr. 1889, 1890. As to the printing of bills, see Ord. IX. 2; and *ante*, No. 195. The scheme, together with the declaration of inability, and affidavit of its truth (see *post*, Nos. 2097, 2098) annexed thereto, must be filed in the office of the Clerks of Records and Writs: Ord. 24 Jan. 1868, r. 5; Dan. Pr. 1890. As to filing a new scheme, see Dan. Pr. 1898.

(*q*) See Ord. 24 Jan. 1868, r. 1; Dan. Pr. 1889; and *ante*, No. 197.

(*r*) As to the title, see Ord. 24 Jan. 1868, r. 2; Dan. Pr. 1889.

(*s*) See 30 & 31 Vic. c. 127, s. 6; Dan. Pr. 1889. Form No. 2097 was used in the cases of *Re Mold and Denbigh Junction Railway Company* (1868, M. No. 66); *Re Mid Wales Railway Company* (1868, M. No. 17); and *Re Mid Hants Railway Company* (1868, M. No. 141); but the attestation was used in the latter case only. The declaration, and also the affidavit of its truth (see *post*, No. 2098), must be written bookwise, upon paper of the same size and description as that on which bills are printed; and be annexed to the scheme, and filed at the same time therewith: Ord. 24 Jan. 1868, rr. 4, 5; Dan. Pr. 1889, 1890. As to such paper, see Ord. IX. 2; and *ante*, No. 195.

we the —— railway company do hereby declare that we are unable to meet our engagements with our creditors.

Sealed with our common seal this —— day of ——, 187—.

Sealed by order of the Board of Directors of the said company.
A. B.,
Secretary [*or as may be*].

Seal.

2098.

Affidavit of the truth of the declaration (*t*).

(*Title: as in* No. 2097, *ante.*)

I, A. B., of (*residence and addition*): being the acting chairman for the time being of the board of directors of the above named railway company: and we, C. D., of *&c.*, E. F., of, *&c.*, and G. H., of, *&c.*, being the [*Or*, the major part in number of the] directors of the said company: severally make oath and say, as follows:

1. We have read a declaration made in this matter by the above named company, and dated the —— day of ——, 187—, which states that the said company are unable to meet their engagements with their creditors.

2. From our knowledge of the state of affairs of the said company we say that the said declaration is, to the best of our respective judgment and belief, true; and that the said company are unable to meet their engagements with their creditors.

Sworn (*&c.: see ante*, No. 13).

2099.

Indorsement on the scheme (*u*).

(*Title: as in* No. 2097, *ante.*)

(*Name and address of the solicitor, and London agent (if any), of the company; and also the address for service of such solicitor, in cases where an address for service is required by the General Orders of the Court: see ante*, No. 3.)

(*t*) See 30 & 31 Vic. c. 127, s. 6; Dan. Pr. 1889. The affidavit must be made by the chairman, and by the other directors, or the major part in number of them. Form 2098 was used in the cases of *Re Mid Wales Railway Company*, and *Re Mold and Denbigh Junction Railway Company*, *ante*, No. 2097, n. (*s*). As to the paper on which the affidavit must be written, and as to filing it with the scheme, see *ante*, No. 2097, n. (*s*).

(*u*) See Ord. 24 Jan. 1868, r. 6; Dan. Pr. 1890; also Dan. Pr. 378, 379.

2100. Certificate of Record and Writ Clerk that copy of written scheme is proper to be printed (*x*).

I hereby certify the above to be correct and proper to be printed.

X. Y.,
C. R. & W.

2101. Certificate verifying printed copy (*y*).

I hereby certify that this print is a true copy of the scheme of arrangement certified by the Record and Writ Clerk as correct and proper to be printed.

A. B.,
Solicitor of the above [*Or*, within] named —— company.

2102. Demand of copies of scheme (*z*).

In Chancery.

(*Title of matter.*)

I request to be furnished with (ten) copies of the scheme of arrangement in this matter. Dated (*&c.: Conclude as in* No. 54, *ante*).

2103. Certificate verifying the copies (*a*).

I hereby certify that this print is a true copy of the scheme of arrangement filed in this matter.

A. B.
Solicitor of the above-named —— company.

(*x*) See Ord. 24 Jan. 1868, r. 7; Dan. Pr. 1890. Where a written, instead of a printed, scheme is filed (see *ante*, No. 2096, n. (*p*)), a fair copy of it must, at the time of filing, be left with the Clerks of Records and Writs, for examination and certification: see *ib.*

(*y*) See Ord. 24 Jan. 1868, r. 8; Dan. Pr. 1890. As to printing the scheme from the written copy, see *ib.*; and *ante*, No. 2096, n. (*p*).

(*z*) See Ord. 24 Jan. 1868, r. 10; Dan. Pr. 1890. The requisition in writing for the copies is to be delivered at the principal office of the company, or at the office of their solicitor, or of his London agent (if any): *ib.* The sum of one halfpenny per folio is to be paid for every copy of the scheme: Ord. 24 Jan. 1868, r. 11: Dan. Pr. 1891, n. (*n*).

(*a*) See Ord. 24 Jan. 1868, r. 10; Dan. Pr. 1890.

2104.

Advertisement of scheme (*b*).

In the matter of the —— Railway Company; and
In the matter of the Railway Companies Act, 1867.

Notice is hereby given, that on the —— day of ——, 187—, a scheme of arrangement between the above named company and their creditors (*State here whether the scheme contains or not any provisions for settling the rights of any and what classes of shareholders as among themselves, or for raising additional share or loan capital; and which, and to what extent*) was filed in the Court of Chancery; and a copy of the said scheme will be furnished to any person requiring the same by the undersigned, or at the office of the company, at ——, on payment of the regulated charges for the same.

A. and B., of (*Address*),
[Agents for C. and D., of (*Address*)],
Solicitors for the Company (*c*).

2105.

Certificate of filing of scheme (*d*).

Formal parts: see ante, No. 852.

These are to certify that (a printed copy of) the scheme of arrangement in this matter was regularly filed on the —— day of ——, 187—: as appears by my book.

2106.

Notice of motion, or summons, after scheme filed, to restrain action against company (*e*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the above named company, that C. D., of, *&c.*, may be restrained from proceeding in the action in Her Majesty's Court of Queen's Bench [*or as may be*] commenced by him against the said company: on such terms as this Court may think fit.

(*b*) See Ord. 24 Jan. 1868, r. 10, and Sched. 3, No. 1. For advertisement in like case, see *Re Mid Hants Railway Company:* London Gazette, 24 July, 1868, p. 4133. As to advertising the scheme, see 30 & 31 Vic. c. 127, s. 8; Ord. 24 Jan. 1868, r. 12; Dan. Pr. 1891.

(*c*) The notice must be signed by the solicitor of the company, or his London agent; and must set forth the name and address of such solicitor, and London agent (if any): Ord. 24 Jan. 1868, r. 12; Dan. Pr. 1891.

(*d*) See Ord. 24 Jan. 1868, r. 13; Dan. Pr. 1891.

(*e*) See 30 & 31 Vic. c. 127, s. 7; Dan. Pr. 1891, 1896. As to the undertaking to be given by the company, on an action being restrained, see Ord. 24 Jan. 1868, r. 14; Dan. Pr. 1891. As to the general course of proceeding on summons, see Dan. Pr. 1050—1054, and *ante*, No. 1122, *et seq.*; and on notice of motion, see Dan. Pr. 1437—1451, and *ante*, No. 1733, *et seq.*

2107.
Notice of motion, or summons, for leave to issue execution, &c., against company, notwithstanding scheme (*f*).

Formal parts: see ante, No. 55, *or* 60.
on the part of C. D. of (*residence and addition*), that, notwithstanding the scheme of arrangement of the above named company, filed in this matter on the —— day of ——, 187—, the applicant may be at liberty to issue execution against the property of the said company, on the judgment recovered by him in an action against the said company in Her Majesty's Court of —— [*or as may be*].

2108.
Petition to confirm scheme (*g*).

(*Branch of Court, and full title: as in* No. 2096, *ante.*)

To the Right Honourable the Lord High Chancellor of Great Britain [*Or*, To the Right Honourable the Master of the Rolls—*as the case may be*].

The humble petition of A. B., C. D., *&c*, directors of the above named company.

Showeth:

That on the —— day of ——, 187—, the directors of the above named company filed in this honourable Court a scheme of arrangement between the above named company and their creditors.

Your petitioners therefore humbly pray, that the scheme so filed as aforesaid may be confirmed by the order of this honourable Court.

And your petitioners will ever pray, *&c.*

2109.
Summons, for a day to be appointed for hearing the petition (*h*).

Formal parts: see ante, No. 60.
on the part of A. B., C. D., *&c.*, directors of the above named company, that a day may be appointed on which their petition presented in this matter on the —— day of ——, 187—, is to come into the paper for hearing.

2110.
Advertisement of the petition (*i*).

(*Full title: as in* No. 2097, *ante.*)

Notice is hereby given that a petition was, on the —— day of ——, 187—, presented to the Lord Chancellor [*Or*, the Master of the Rolls] by the directors of the above named company, praying the confirmation of a scheme of arrangement between the said

(*f*) See 30 & 31 Vic. c. 127, s. 9; Dan. Pr. 1891, 1896, 1899; and *ante*, No. 2106, n. (*e*).

(*g*) See 30 & 31 Vic. c. 127, s. 16; Ord. 24 Jan. 1868, rr. 15, 16, and Sched. 3, No. 2; Dan. Pr. 1893. As to assents to the scheme, see 30 & 31 Vic. c. 127, ss. 10—15; Dan. Pr. 1892, 1893. As to the general course of proceeding by petition, see Dan. Pr. 1451—1461; and *ante*, No. 1742, *et seq.*

(*h*) See Ord. 24 Jan. 1868, rr. 17, 18; Dan. Pr. 1893, 1894.

(*i*) See Ord. 24 Jan. 1868, rr. 17, 18, and Sched. 3, No. 3; Dan. Pr. 1893, 1894. As to the papers in which the notice is to be advertised, see *ib.*

company and their creditors, filed in the Court of Chancery on the —— day of ——, 187—; and that the said petition is directed to be heard before the Vice-Chancellor Sir —— [*Or*, before the Master of the Rolls] on the —— day of ——, 187—. And any person whose interests are affected by such scheme, and who may be desirous to oppose the making of an order for the confirmation thereof under the above Act, should enter an appearance at the office of the Clerks of Records and Writs on or before the —— day of ——, 187—, and appear by himself or counsel at the hearing of the said petition. And a copy of the scheme and petition will be furnished to any person requiring the same by the undersigned, or at the office of the company at ——, on payment of the regulated charge for the same.

A. and B., of (*Address*),
[Agents for C. and D., of (*Address*)],
Solicitors for the Petitioners.

2111.

Præcipe for appearance by opponent of scheme (*k*).

In Chancery.

(*Title, and reference to the record.*)

Enter an appearance for G. H., of (*residence and addition*), to the scheme of arrangement filed in this matter.

Dated this —— day of ——, 187—.

(*Name, &c., of solicitor or party entering the appearance : see ante*, No. 4, *or* 7.)

2112.

Notice of appearance (*l*).

Formal parts : see ante, No. 54.

Take notice, that I have this day entered an appearance for G. H., of (*residence and addition*), to the scheme of arrangement filed in this matter.

2113.

Order confirming a scheme (*m*).

Date—title—and introduction.

And this Court being of opinion that the said scheme is beneficial for all parties interested in the said M. & D. J. Railway Company, doth order that the said scheme be confirmed.

(*k*) See Ord. 24 Jan. 1868, rr. 19, 20 ; Dan. Pr. 1894. For the general practice as to entering appearances, see Dan. Pr. 459—464, and *ante*, No. 484, *et seq.*

(*l*) It is presumed that notice of entering the appearance should be given, and on the day it is entered : as in other cases.

(*m*) See 30 & 31 Vic. c. 127, s. 11 ; Dan. Pr. 1894. For order in like case, see *Re Mold and Denbigh Junction Railway Company*, V. C. M. 12 June, 1868, Reg. Lib. B. 1664. For order confirming a scheme (but not to be treated as

2114.
Notice of order confirming a scheme (*n*).

(*Title : as in* No. 2097, *ante.*)

Notice is hereby given that the petition which was on the —— day of ——, 187—, presented to the Lord High Chancellor of Great Britain [*Or,* to the Master of the Rolls] by the directors of the above named company, praying that the scheme of arrangement between the said company and their creditors, filed in the Court of Chancery on the —— day of ——, 187—, might be confirmed, came on to be heard before the Vice-Chancellor Sir —— [*Or,* before the Master of the Rolls] on —— the —— day of ——, 187— ; and by an order then made by the said Judge it was ordered that the said scheme be confirmed (*o*).

Dated this —— day of ——, 187—.

A. and B., of (*Address*),
[Agents for C. and D., of (*Address*)],
Solicitors for the said company.

2115.
Rehearing of a petition for confirmation of a scheme (*p*).

See the following Forms, *ante :*
Petition for a rehearing : No. 1613.
Foot note thereto : No. 1614.
Certificate of counsel : No. 1615.
Undertaking as to costs : No. 1616.

2116.
Notice of motion, for leave to present a petition for rehearing (*q*).

Formal parts : see ante, No. 55.

on the part of B. A., of (*residence and addition*), that he may be at liberty to present and file, and appear on the hearing of, a petition in this matter : praying that (*Recite the prayer*).

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binding on certain unpaid vendors and creditors, unless they expressly assented), continuing appointment of receiver and manager, and providing for the costs of the proceedings, see *Re Hayling Railways Company,* V. C. M. 7 May, 1868, Reg. Lib. A. 1607. And for order confirming a scheme as varied thereby, and providing for the costs, see *Re Isle of Wight Railway Company,* V. C. J. 20 Nov. 1869, Reg. Lib. A. 3024 ; W. N. (1869), 239.

(*n*) See Ord. 24 Jan. 1868, r. 17 ; Dan. Pr. 1894. As to the time allowed, and the papers in which, to advertise the notice, see *ib.*

(*o*) State, correctly, the purport of the order made.

(*p*) See Ord. 24 Jan. 1868, rr. 24, 27 ; Dan. Pr. 1895 ; and *ante,* Nos. 1613—1616, and notes thereto. As to the time allowed to petition for a rehearing, see Ord. 24 Jan. 1868, r. 25 ; Dan. Pr. 1895. As to appeals and rehearings in Chancery, see Dan. Pr. 1329, *et seq. ;* and as to petitions of rehearing, and service of orders thereon, see *ib.* 1346—1352 ; and see *ante,* No. 1610, *et seq.*

(*q*) See Ord. 24 Jan. 1868, r. 26 ; Dan. Pr. 1895, 1899. As to when this notice is necessary, see *ib.* The notice must be given to the company, and be served on their solicitor, or at their principal office : *ib.*

2117. Docket of enrolment of order confirming a scheme (*r*).

Whereas heretofore, that is to say, on the —— day of ——, in the year of our Lord, 187—, A. B., of, *&c.*, C. D., of, *&c.*, and E. F., of, *&c.* (*s*), (three) of the directors of the company hereinafter mentioned, duly filed a scheme in the High and Honourable Court of Chancery, in a certain matter intituled (*Set out the full title, as in the order*), purporting to be a scheme of arrangement between the said —— company and their creditors; together with a declaration and affidavit, pursuant to the Act of Parliament in that case made and provided; as in and by the said scheme duly filed, and remaining as of record in the said Court, will more fully appear:

If so, add: And whereas G. H., I. K., and L. M. duly entered appearances to the said scheme:

And whereas (*Recite, in the past tense, the whole of the order confirming the scheme: substituting* the said Court—the said matter—*for the expressions* this Court—this matter—*respectively*):

If the order was made by a Vice-Chancellor, insert here: and which order has been duly signed by the Lord High Chancellor of Great Britain [*Or*, by the Lords Commissioners for the custody of the Great Seal of Great Britain], pursuant to the Act of Parliament in that case made and provided (*t*):

It is, therefore, this present day (*Continue from these words in* No. 893, *ante, to the end of that form: omitting the certificate*).

(*r*) See Ord. 24 Jan. 1868, rr. 21—24; Dan. Pr. 1894, 1895. An order confirming a scheme is enrolled at the Record and Writ Clerks' Office; but the scheme itself is enrolled in the Inrolment Office in Chancery Lane, pursuant to the 30 & 31 Vic. c. 127, s. 18, after the order confirming it has been enrolled: Ord. 24 Jan. 1868, r. 21; Dan. Pr. 1894; and is effected in the same manner as the enrolment of a deed directed by statute to be enrolled in the Court of Chancery: Ord. 24 Jan. 1868, r. 28; Dan. Pr. 1896. For the general practice as to enrolments of decrees and orders in Chancery, see Dan. Pr. pp. 882—884, and *ante*, No. 887, *et seq.* Orders confirming schemes of arrangement have been enrolled in the following cases: *Re Hayling Railways Company* (1868, H. No. 37), V. C. M. 7 May, 1868, Reg. Lib. A. 1607: enrolled 10th July, 1868; *Re Mid Wales Railway Company* (1868, M. No. 17), V. C. M. 12 June, 1868, Reg. Lib. B. 2044: enrolled 18th September, 1868; *Re Mold and Denbigh Junction Railway Company* (1868, M. No. 66), V. C. M. 12 June, 1868, Reg. Lib. B. 1664: enrolled 18th September, 1868; and *Re Isle of Wight Railway Company* (1869, I. No. 57), V. C. J. 20 Nov. 1869, Reg. Lib. A. 3024: enrolled 31st December, 1869, as amended by the order; see *ante*, No. 2113, n. (*m*).

(*s*) Take the names and addresses from the affidavit made by the chairman and directors: see *ante*, No. 2098.

(*t*) See 53 Geo. III. c. 24, s. 2; 5 Vic. c. 5, s. 22; Braithwaite's Pr. 453, n. (*f*).

2118.
Certificate that the docket is correct (*u*).

I have inspected this docket, and hereby certify that the statement of the scheme and order therein contained is correct.

(*Signature of Record and Writ Clerk.*)

At the request of the said ——.

2119.
Notice of the confirmation and enrolment of the scheme (*x*).

Proceed as in No. 2114, *ante, to the end of the statement of the order confirming the scheme; and continue thus:*

And notice is hereby also given, that the said order confirming the said scheme was enrolled in the said Court of Chancery on the —— day of ——, 187—; and that the said scheme was enrolled in the said Court of Chancery on the —— day of ——, 187—

Dated (*&c.: Conclude as in* No. 2114, *ante.*)

SECTION IX.—STATUTES RELATING TO ARBITRATION (*y*).

2120.
Motion paper, to make a submission to arbitration, by consent, an order of Court (*z*).

In Chancery.

In the matter of the arbitration between A. B., and C. D., [*or as may be*];

And in the matter of the Common Law Procedure Act, 1854.

To move on behalf of the said A. B., that the submission to arbitration contained in (*Describe the document; as thus:* an indenture dated the ——, 187—, and made between the said A. B. of the one part, and C. D. of the other part), may be made an order of this Court: to be observed and performed by all parties, according to the tenor and true meaning thereof.

(*u*) As to this certificate, see Ord. 24 Jan. 1868, r. 22; Dan. Pr. 1895; and see Ord. XXIII. 24; Dan. Pr. 883. The certificate is not to be given, unless the newspapers containing the notices (see *ante*, No. 2114) of the order confirming the scheme be produced to the Record and Writ Clerk when the docket of the enrolment is presented to him for inspection: see Ord. 24 Jan. 1868, r. 22; Dan. Pr. 1895.

(*x*) See 30 & 31 Vic. c. 127, s. 19; Dan. Pr. 1894. The notice is to be published in the London Gazette: *ib.* For a notice in like case, see *Re Devon and Somerset Railway Company:* London Gazette, 11 Aug. 1868, p. 4462. As to obtaining printed copies of the scheme when enrolled and confirmed, see 30 & 31 Vic. c. 127, s. 20; Dan. Pr. 1894, n. (*n*).

(*y*) See 9 & 10 W. 3, c. 15; 3 & 4 W. 4, c. 42, ss. 39—41; Common Law Procedure Act, 1854 (17 & 18 Vic. c. 125), ss. 3—17; Dan. Pr. 1901—1909. For the practice at law as to arbitrations, see Chitty's Arch. 1631, *et seq.*, 1796—1800; Chitty's Forms, 946—948; Russell on Arbit., *passim.*

(*z*) See 17 & 18 Vic. c. 125, s. 17; Dan. Pr. 474, 579, 1902. For order in

2121.

Notice of motion, to make a submission to arbitration, by consent, an order of Court (*a*).

(*Title: as in* No. 2120, *ante; and other formal parts: as in* No. 55, *or* 60, *ante.*)

on the part of A. B., that the submission (*Continue as in* No. 2120, *ante, to the end*).

2122.

Affidavit, verifying signatures to the submission (*b*).

Formal parts: see ante, No. 9.

1. On the —— day of ——, 187—, I saw A. B. and C. D., the parties to the parchment [*Or,* paper] writing dated the —— day of ——, 187—, now produced and shown to me, and marked F. (*c*), and purporting to be a submission of certain matters to arbitration, duly sign, seal, and as their respective acts and deeds deliver [*Or, if not under seal, say:* duly sign] the said exhibited document.

2. The names or signatures "——" and "——", respectively set and subscribed to the said parchment [*Or,* paper] writing, are of the proper handwriting of the said A. B. and C. D., respectively.

3. The name or signature "——," set and subscribed to the attestation of the signatures of the said A. B. and C. D., indorsed on [*Or,* written under] the said parchment [*Or,* paper] writing, is of my proper handwriting.

2123.

Notice of motion, to stay suit, after a reference agreed on (*d*).

Formal parts: see ante, No. 2121.

on the part of the defendant, that, pursuant to the Common Law Procedure Act, 1854, section 11, all proceedings in this suit may be stayed: the matters in difference therein between the parties thereto having been agreed to be referred to arbitration.

like case, on motion for both parties, see *Re Walton Shore Road,* V. C. S. 18 Jan. 1866, Reg. Lib. B. 2233; and see Seton, 1123, 1124; Braithwaite's Pr. 553. As to when the application may be made *ex parte,* see Dan. Pr. 1902. The submission must be filed in the Report Office: *ib.;* Ord. XXIII. 23. For forms of agreement or submission to arbitration, see Chitty's Forms, 913—915. As to the course, where the submission is directed to be filed with the Clerks of Records and Writs, see Dan. Pr. 1902, n. (*y*).

(*a*) See last note. In *Prance* v. *McCulloch,* M. R. at Chambers, 6 July, 1870: Reg. Lib. B. 2315, the order was made on summons, by consent.

(*b*) See Dan. Pr. 1902. As to when an affidavit is necessary, see *ib.*

(*c*) Exhibit it. For form of memorandum of exhibit, see *ante,* No. 43.

(*d*) See 17 & 18 Vic. c. 125, s. 11; Dan. Pr. 1906—1908.

2124. Notice to concur in appointment of an arbitrator, or third arbitrator or umpire (*e*).

Take notice, that you are hereby required, on or before the —— day of ——, 187—, to concur with me in appointing an arbitrator [*Or*, umpire, or third arbitrator] to whom all matters in difference between us may be referred, in pursuance of the submission between us dated the —— day of ——, 187—: to act in the place of E. F. deceased [*or as may be*]. Dated this —— day of ——, 187—.

A. B., of (*residence and addition*).

To C. D., of (*residence and addition*).

2125. Summons, for such appointment to be made, on default (*f*).

(*Title: as in* 2120, *ante.*)

Let (*&c.: Proceed as in* 1123, *ante, to* noon), on the hearing of an application on the part of the above named A. B., that G. H., of (*residence and addition*), may be appointed arbitrator [*Or*, umpire, or third arbitrator], to whom all matters in difference between the said A. B. and the above named C. D. may be referred, in pursuance of the submission between them dated the —— day of ——, 187—: the said G. H. to act in the place of E. F. deceased [*or as may be*].

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

2126. Summons, to revoke appointment of sole arbitrator (*g*).

Formal parts: see ante, No. 2125.

on the part of the above named A. B., that the appointment by the above named C. D., of E. F. to act as sole arbitrator, to whom all matters in difference between the said A. B. and C. D. shall be referred, in pursuance of the submission between them dated the ——, 187—, may be revoked. And that the said matters in difference may be referred to the said E. F., jointly with G. H., of (*residence and addition*), as the arbitrators of the said A. B. and C. D., respectively.

2127. Summons, to refer matters in difference in a cause to arbitration, by consent (*h*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that, by consent, all matters in difference (*i*) between the parties to this cause may

(*e*) See 17 & 18 Vic. c. 125, s. 12; Dan. Pr. 1903, 1904.

(*f*) *Ibid.* The application is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante,* No. 1123, *et seq.*, and notes thereto.

(*g*) See 17 & 18 Vic. c. 125, s. 13; Dan. Pr. 1904. The application is made by an originating summons: as to which, see *sup.* n. (*f*).

(*h*) See *Corbett* v. *Fox,* V. C. S. 8 Dec. 1866, Reg. Lib. A. 2786: on motion for decree; and see Dan. Pr. 1905; Seton, 1122.

(*i*) For order referring certain specified matters, see *Blagrave* v. *Blagrave,* V. C. W. 22 July, 1862, Reg. Lib. A. 1710.

be referred to the arbitrament and final determination of S. Y., of, *&c.*, on the terms following; namely:

1. The said arbitrator is to make his award in writing, on or before, *&c.*; or within such further time as he shall appoint.
2. All deeds, books and papers in the custody or power of any of the parties, relating to the matters in question, are to be produced before the said arbitrator, as he shall direct: to be ascertained by the oaths of the respective parties producing the same.
3. The parties and their witnesses: being first sworn: are to be examined, as the said arbitrator shall direct.
4. The costs of this cause, and of this application, and of the reference hereby directed, are to be in the discretion of the said arbitrator.
5. No bill is to be filed, or any action or other proceeding brought or taken, by any of the parties hereto, against the said arbitrator, for any matter or thing he shall do in or about, or touching any of the matters hereby referred to him.
6. The said arbitrator is to have power from time to time to enlarge the time for making his award: as he shall think fit.
7. Either of the parties hereto is to be at liberty to make such award an order of this Court.

Liberty to apply (*k*).

2128.

Notice of motion, or summons, to enlarge time for making award in a cause (*l*).

Formal parts: see ante, No. 55, *or* 60.

on the part of the plaintiff [*or as may be*], that the time limited by the order dated the ——, 187—, for R. B., therein named, to make and publish his award in this cause, may be enlarged until the ——, 187—.

2129.

Summons for the like, in other cases (*m*).

(*Title: as in* No. 2120, *ante.*)

Let (*&c.: Proceed as in* No. 60, *or* 1123, *ante* (*n*), *to* noon), on the hearing of an application on the part of the above named A. B., that the time limited by the submission to arbitration in this matter, for making the award in pursuance thereof, may be enlarged until the ——, 187—: on the ground that (*State the cause for the enlargement*).

Dated (*&c.: Conclude as in* No. 60, *or* 1123, *ante* (*n*)).

(*k*) See Dan. Pr. 1905.

(*l*) *Ibid.*, 1904. For order in like case, see *Blagrave* v. *Blagrave*, V. C. W. at Chambers, 30 June, 1865, Reg. Lib. A. 1328: on certificate of arbitrator that further time was needed.

(*m*) See 17 & 18 Vic. c. 125, s. 15; Dan. Pr. 1904. For order in like case, see Seton, 1126, No. 2.

(*n*) If an order has previously been made in the matter of the arbitration, the application should be made by an ordinary summons: otherwise, by an origi-

2130. Formal parts of an award (*o*).

To all to whom these presents shall come : I, E. F., of (*residence and addition*), send greeting :

Whereas (*Recite the agreement or submission, or so much of its terms as may be essential to show the authority of the arbitrator, or umpire, with respect to the subject matter of reference, and the time, power of enlargement, and manner of making the award. Recite the enlargements, if any ; and continue thus*) :

Now know ye, that I, the said E. F., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as aforesaid, do make and publish this my award in writing of and concerning the said matters so referred to me ; and do hereby award (*&c. : Conclude with a distinct statement of the arbitrator's decision on all the points referred to him*). In witness whereof I have hereunto set my hand (*If so :* and seal) this —— day of ——, 187—.

E. F.

Witness to the signature of the said E. F. }
[*Or*, Signed, sealed, and delivered by the said E. F. in the presence of] : }
G. H., of (*residence and addition*).

2131. Notice of motion, to make award an order of Court (*p*).

Formal parts : see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the award dated the ——, 187—, of E. F., the arbitrator in this cause, may be made an order of this honourable Court.

2132. Affidavit of publication of an award (*q*).

Formal parts : see ante, No. 9.

1. On the —— day of ——, 187—, I saw E. F., of (*residence and addition*), sign and publish [*Or*, sign, seal, and publish] his award in this matter dated the —— day of ——, 187—, and now produced and shown to me, and marked G. (*r*).

2. The name or signature "——," set and subscribed to the said award, as the party executing the same, is of the proper handwriting of the said E. F.

nating summons. For the practice as to such summonses, see Dan. Pr. 1050, *et seq.* ; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*o*) See Chitty's Forms, 920. For forms of awards, see *ib.*, 922, *et seq.* ; Russell, 758, *et seq.*

(*p*) See Dan. Pr. 1906. For order in like case, see *Duxbury* v. *Isherwood*, V. C. W. 4 May, 1865, Reg. Lib. A. 914. The award must be filed in the Report Office, before the order is passed : Dan. Pr. 1906; Ord. XXIII. 23. In the case cited, the order was made by consent, on production of the award, and an affidavit of the publication thereof.

(*q*) See Dan. Pr. 1906.

(*r*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

3. The name or signature "——," set and subscribed to the attestation, written at the foot of the said award, of the execution thereof by the said E. F., is of my proper handwriting.

2133.

Notice of motion, to set down for hearing a special case stated by an arbitrator (*s*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the award dated the ——, 187—, of E. F., the arbitrator in this cause [*Or*, matter], may be set down for hearing as a special case, upon the questions thereby submitted for the determination of this honourable Court.

2134.

Notice of motion, to set aside an award (*t*).

Formal parts: see ante, No. 55.

on the part of the plaintiff [*or as may be*], that the award dated the ——, 187—, of E. F., the arbitrator in this cause [*Or*, matter], may be set aside on the following grounds; namely (*State them; as thus:*

(1) For that the said arbitrator has not arbitrated upon matters which were referred to him.

(2) For that the said award is uncertain, and not final as to the matters arbitrated upon, or referred to in the said award).

2135.

Notice of motion, to remit matters to reconsideration of arbitrator (*u*).

Formal parts: see ante, No. 55.

on the part of the said R. W., that the time limited by the submission to arbitration in this matter, for making the award in pursuance thereof, may be enlarged to the ——, 187—; and that the matters be remitted to the arbitrator to supply an accidental omission in one part of his award, of the words "taken in due form of law as aforesaid and," and of the word "satisfy"; and for a direction therein that if one of the parties to the said reference should pay the whole of the fees and compensation of the third arbitrator, the other party should repay him a moiety thereof; and also for the re-execution of the said award.

(*s*) See Dan. Pr. 1904; 17 & 18 Vic. c. 125, s. 5. For order in like case, see Seton, 1126, No. 1.

(*t*) See Dan. Pr. 1903; 9 & 10 W. 3, c. 15, s. 2. As to the jurisdiction of the Court over awards, see Dan. Pr. 253, 474, 579; Adams on Eq. 191, *et seq.*; 1 C. P. Coop. t. Cott. 386, *et seq.*; Jeremy on Eq. 493, *et seq.*; Russell on Arbitration, 680—695; Seton, 1122, *et seq.*; Story Eq. Jur. s. 1450, *et seq.*

(*u*) *Re Walton Shore Road*, V. C. S. 20 Dec. 1866, Reg. Lib. B. 2709: 15 W. R. 303; S. C. *nom. Re Warner & Powell*, Law Rep. 3 Eq. 261; and see Dan. Pr. 1905; 17 & 18 Vic. c. 125, ss. 8, 15.

SECTION X.—ACT FOR PRODUCTION OF CESTUI QUE VIE (*z*).

2136.
Motion paper for production of *cestui que vies* out of Court (*a*).

In Chancery.

(*Title ; as thus :*)

Ex parte E. F.

In the matter of an indenture of lease dated ——, 187—, made between A. B. of the one part, and C. D. of the other part [*or as may be*].

And in the matter of the Act 6th Anne, chapter 18, intituled "An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths."

To move on behalf of E. F., of (*residence and addition*), that C. D., of *&c.*, may be ordered, on the ——, 187—, to produce and show at the door of the parish church of E., in the county of F. : between the hours of eleven in the forenoon, and one in the afternoon [*or as may be*] : according to the provisions of the above Act : to the said E. F.

Or, to G. H., of *&c.*, the agent of the said E. F.

L. M., N. O., and P. Q., in the above mentioned indenture dated, *&c.*, respectively described, or some or one of them (*b*).

2137.
Affidavit in support (*c*).

Formal parts : see ante, No. 9.

1. *Show the creation of the life estate ; as thus :* By an indenture dated the ——, 18—, and made between A. B. of the one part, and C. D. of the other part : being the indenture mentioned in the title or heading of this affidavit : certain lands therein described, situate at W., in the parish of E., in the county of F., were demised by the said A. B. to the said C. D., for and during the lives of L. M., N. O., and P. Q., therein respectively described, and the life of the longest liver of them.

2. *Show the applicant's title to the reversion ; as thus :* By indenture dated the ——, 187—, made between the said A. B. of the one part, and me, the deponent, of the other part, the said A. B. granted and conveyed to me, my heirs and assigns, all the

(*z*) 6 Anne, c. 18. As to this Act, see Dan. Pr. 1908—1911 ; Chambers on Infants, 162 ; Co. Litt. by Harg. 57b., n. (2) ; Hubback, 181 ; Seton, 521 ; Woodfall, 9. As to the course, where the tenant for life, or *cestui que vie*, is abroad : or, though alive, cannot be produced : see 6 Anne, c. 18, ss. 2, 4 ; Dan. Pr. 1910, 1911. The Master of the Rolls has no jurisdiction under this Act : Dan. Pr. 1911.

(*a*) See 6 Anne, c. 18, s. 1 ; Dan. Pr. 1908, 1909. For order in like case, see *Ex parte Earl of Abergavenny*, V. C. K. 5 May, 1865, Reg. Lib. A. 807 (on special motion) ; and see Seton, 521, No. 1.

(*b*) For other formal parts of the motion paper, see *ante*, No. 53.

(*c*) See Dan. Pr. 1909.

lands comprised in, and demised by, the said indenture of lease, but subject to such lease. I am now entitled to the reversion of the said lands, expectant on the death of the survivor of the said L. M., N. O., and P. Q.

3. *State special ground for the application; as thus:* I have good cause to believe that all of them the said L. M., N. O., and P. Q. are dead; and that such deaths are concealed by the said C. D., the lessee, and present tenant of the said lands.

2138.

Motion paper, for production of *cestuis que vies* in Court, on default (*d*).

Formal parts: see ante, No. 53.

To move on behalf of E. F., in the annexed order dated, *&c.*, named, that C. D., therein named, may be ordered to produce L. M., N. O., and P. Q., therein also named, at the bar of this Court on ——, 187—.

An affidavit in support accompanies.

2139.

Affidavit in support (*d*).

Formal parts: see ante, No. 9.

1. *Prove service of the order to produce at the church door: see ante*, No. 48.

2. *Prove attendance there, and non-production; as thus:* On the —— day of ——, 187—, I personally attended and waited at the door of the parish church of E., in the county of F., from before the hour of eleven of the clock in the forenoon, till after the hour of one of the clock in the afternoon of that day: being the place and time appointed by the said order of the ——, 187—, for the production by the said C. D. to me of L. M., N. O., and P. Q., in the said order named, or some or one of them; but the said C. D. did not, nor did any person on his behalf, attend at the time and place aforesaid and produce the said L. M., N. O., and P. Q., or any or either of them; nor have the said L. M., N. O., and P. Q., or any or either of them, been produced to me since the date of the said order.

2140.

Motion paper, for final order, on non-production (*e*).

Formal parts: see ante, No. 53.

To move on behalf of E. F., in the annexed order dated, *&c.*, named, for an order that L. M., N. O., and P. Q., in the said order named, may be deemed to be dead: in the event of their not being produced in open Court, pursuant to such order, on the ——, 187—.

An affidavit of service of the order accompanies.

(*d*) See 6 Anne, c. 18, s. 1; Dan. Pr. 1909. For order in like case, see Seton, 522, No. 2.

(*e*) See 6 Anne, c. 18, s. 1; Dan. Pr. 1909, 1910. For order in like case, see Seton, 522, No.

Formal parts: see ante, No. 9.
Prove service of the order for production in Court: see ante, No. 48.

2141. Affidavit in support (*f*).

Section XI.—Legacy Duty Act (*g*).

2142. Motion paper, for leave to transfer stock into Court (*h*).

Formal parts: as in No. 53, *ante; but entitle the motion paper thus:*

In the matter of A. B., an infant [*Or*, A. B., absent beyond seas].

And in the matter of the Act 36th George the third, chapter 52, intituled "An Act for repealing certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases."

To move on behalf of C. D., of (*residence and addition*): executor of the will [*Or*, administrator of the personal estate] of E. F., late of, *&c.*, deceased: that he may be at liberty to transfer £——, bank 3*l.* per cent. annuities [*or as may be*], into the name of the Accountant-General, to the credit of the matter and account "A. B., an infant" [*Or*, "A. B., absent beyond seas"]: being a legacy [*Or*, share of residue of personal estate] to which the said A. B. is entitled under the said will.

Or, being the said A. B.'s distributive share of the said E. F.'s personal estate, as one of his next of kin—*or as may be.*

2143. Summons, for the like (*i*).

(*Title: as in* No. 2142, *ante.*)

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of C. D., of (*&c.: Continue as in* No. 2142, *ante, to the end*). Dated (*&c.: Conclude as in* No. 60, *ante*).

(*f*) See *ante*, No. 2140, n. (*e*).

(*g*) 36 Geo. III. c. 52, s. 32; and see Dan. Pr. 1911—1914.

(*h*) See Dan. Pr. 1912; Rep. Chan. Funds Com. xix.; *ib.* App. 8, 34; Seton, 722; Trevor on Taxes on Succession, 261. For order in like case, see Seton, 721. As to payments in, in cash, of legacies and shares of residues, without an order, see Dan. Pr. 1912. For the mode of making payments and transfers into Court, see *ib.* 1636, *et seq.*

(*i*) For order in like case, see *Re Thomas*, M. R. at Chambers, 8 July, 1869, Reg. Lib. B. 2305. The application is made *ex parte* by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

2144.
Petition, for the like (*j*).

In Chancery.
(*Branch of Court* (*k*).)
(*Title: as in* No. 2142, *ante.*)
Address to the L. C., or M. R.: see ante, No. 56.
The humble petition of C. D., of (*residence and addition*).
Showeth as follows:
Show how the fund to be transferred into Court has arisen; as thus: 1. E. F., late of (*residence and addition*), by his will dated ——, 18—, bequeathed to his nephew, the above named A. B., a legacy of £500, bank 3*l.* per cent. annuities; and appointed your petitioner sole executor of his will. The said E. F. died on the ——, 187—, without having altered or revoked his said will; and on the ——, 187—, your petitioner proved such will in the Principal Registry of Her Majesty's Court of Probate.
State the disability, rendering the transfer into Court necessary; as thus: 2. The said A. B. is an infant of the age of —— years, or thereabouts.
State the amount to be transferred; as thus: 3. By reason of such disability of the said A. B., your petitioner is desirous to transfer into Court, under the provisions of the above mentioned Act, in manner hereinafter mentioned, the sum of £470, bank 3*l.* per cent. annuities, residue of the said legacy of £500 like annuities, after the sale and application of £30 part thereof, for the legacy duty thereon.
Your petitioner therefore humbly prays, that he may be at liberty to transfer the said sum of £470, bank 3*l.* per cent. annuities, into the name and with the privity of the Accountant-General of this Court, to the credit of the matter and account "A. B., an infant" [*Or*, "A. B., absent beyond seas"].
Or that your lordship (*&c.: Conclude as in* No. 57, *ante; and add foot note,* No. 58).

2145.
Notice to the Accountant-General, to cease to invest dividends (*l*).

In Chancery.
(*Title of the matter and account: as in the Accountant-General's voluntary certificate.*)
Sir:
I beg to inform you that I claim
Or, that my client A. B., of (*residence and addition*) claims to be entitled to the £—— bank 3*l.* per cent. annuities [*or as*

(*j*) See *ante,* No. 2142, n. (*h*). The application by petition is made *ex parte.* For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante,* No. 1742, *et seq.*, and notes thereto.
(*k*) See Ord. VI. 6; and *ante,* No. 197.
(*l*) See Dan. Pr. 1912; Ord. I. 11. As to investments under this Act, see *ib.*

may be] remaining on the credit of the above mentioned matter and account; and that I intend [*Or*, that he intends] to make an application forthwith to this Court, or to a Judge thereof at Chambers, for the disposition of the said fund.

Or, for the application of the dividends of the said fund—*or as may be.*

I have therefore to request, that the dividends hereafter to accrue on the said bank annuities may not be laid out or invested. Dated this —— day of ——, 187—.

A. B., of (*residence and addition*).
[*Or*, G. H., of (*Place of business*), Solicitor for the said A. B.]

To the Accountant-General of the Court of Chancery.

2146. Petition, for transfer and payment of legacy, to the legatee (*m*).

In Chancery.
(*Branch of Court* (*n*).)
(*Title: as in* No. 2142, *ante.*)
Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the above named A. B., of (*residence and addition*), late an infant [*or as may be*].

Showeth as follows:

Show how the fund arose; and the payment into Court; as thus: 1. E. F., late of, *&c.*, a maternal uncle of your petitioner, died intestate on ——, 187—, leaving your petitioner one of his next of kin according to the statutes of distribution; and on the ——, 187—, letters of administration of his personal estate were granted to C. D. by the Principal Registry of Her Majesty's Court of Probate,

2. In consequence of the infancy of your petitioner, the said C. D., on or about the ——, 187—, paid into the bank, with the privity of the Accountant-General of this honourable Court, to the credit of this matter and account, "A. B. an infant," the sum of £A., as your petitioner's distributive share of the personal estate of the said E. F., as one of his next of kin.

Show the present state of the fund; as thus: 3. The said £A. was laid out by the Accountant-General in the purchase in his name of £B., bank 3*l.* per cent. annuities; and the same, with the interest and accumulations of interest thereon, is now represented by the sums of £C., like annuities, and £D., cash, respectively remaining on the credit of the said matter and account.

Show that the disability has been removed; as thus: 4. Your petitioner attained his age of twenty-one years on the —— day of ——, 187—.

(*m*) See Dan. Pr. 1912, 1913. For order in like case, see *Re Barnett*, V. C. S., 15 Dec. 1865, Reg. Lib. A. 2357. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*n*) See Ord. VI. 6; and *ante*, No. 197.

Your petitioner therefore humbly prays, that the sums of £C., bank 3*l.* per cent. annuities, and £D., cash, respectively remaining on the credit of the matter and account "A. B., an infant," and any interest to accrue on the said bank annuities, may be transferred and paid to your petitioner, A. B.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

2147.

Summons, for the like (*o*).

(*Title: as in* No. 2142, *ante.*)

Let (*&c.: Proceed as in* No. 60, *ante, to* noon), on the hearing of an application on the part of the above named A. B., of (*residence and addition*), late an infant, but now adult, that the (*Describe the fund from the Accountant-General's voluntary certificate; as thus:* £——, bank 3*l.* per cent. annuities, and £——, cash, respectively remaining on the credit of the matter and account "A. B., an infant"), and any interest to accrue on the said bank annuities, may be transferred and paid to the applicant A. B. Dated (*&c.: Conclude as in* No. 60, *ante*).

2148.

Summons, for payment out, of legacy paid in pursuant to order of a County Court (*p*).

The same as No. 2147, *ante.*

2149.

Affidavit in support of petition or summons, for transfer and payment of legacy to the legatee (*q*).

Formal parts: see ante, No. 9.

1. I know and am well acquainted with A. B., in the title or heading of this affidavit named. He is the same person as A. B., the petitioner named in the petition presented to the Lord High Chancellor [*Or*, to his lordship the Master of the Rolls],

Or, as A. B., the applicant named in the summons taken out

(*o*) See Dan. Pr. 1912, 1913. For order in like case, see *Re Gadesden*, V. C. S. at Chambers, 4 Dec. 1866, Reg. Lib. A. 2772. As to when the application may be made by summons, see Ord. XXXV. 1 (2); Dan. Pr. 1913. If an order has previously been made in the matter, an ordinary summons will be sufficient: otherwise, an originating summons will be necessary. For the practice as to such summonses, see Dan. Pr. 1050, *et seq.*; and *ante*, No. 1123, *et seq.*, and notes thereto.

(*p*) See the County Courts Act, 1865 (28 & 29 Vic. c. 99), s. 5; County Court Orders, 1867: Ord. in Eq. XVII. 7, 8, and Sched. Nos. 34, 39; W. N. (1868), Pt. II. 35, 174, 175; Pollock & Nicol, 306, 645, 647; Dan. Pr. 1913, 1973. The application, in this case, must be made to "one of the Vice-Chancellors while sitting at Chambers": 28 & 29 Vic. c. 99, s. 5.

(*q*) See Dan. Pr. 1913.

at the Chambers of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor ——],
in this matter, on the —— day of ——, 187—; and he is also the same person as A., son of G. B. and H. his wife, named in the paper writing now produced and shown to me, and marked A. (*r*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of M., for the year 18— [*or as may be: see ante*, No. 1493].

2. *Verify any other facts stated in the petition; or necessary to be proved in support of the summons.*

3. *Show means of knowledge.*

Section XII.—Land Tax Redemption Acts (*s*).

2150. Petition, for leave to cut and sell timber on a settled estate, and apply proceeds in redeeming the land tax (*t*).

In Chancery.

(*Branch of Court* (*u*).)

In the matter of the estates settled by the will of A. B., esquire, deceased [*or as may be*].

And in the matter of the Act 42nd George the third, chapter 116, intituled "An Act for consolidating the provisions of the several Acts passed for the redemption and sale of the land tax into one Act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for Knights of the Shire and other members to serve in Parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased."

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of C. D., of (*residence and addition*).

Showeth as follows:

1. *State sufficient of the instrument under which the petitioner claims title to show that he is entitled beneficially to the rents and profits of the hereditaments charged with the land tax, and that he is restricted from cutting down timber standing thereon.*

2. *State the amount of the land tax.*

(*r*) Exhibit it. For form of memorandum of exhibit, see *ante*, No. 43.

(*s*) 42 Geo. III. c. 116, s. 67; amended by 16 & 17 Vic. c. 117. As to these Acts, see Dan. Pr. 1914—1915; and as to the land tax, see Dixon, 344; Fisher, 883, 1094; 5 Petersdorff's Abr. 295; 1 Prideaux's Conv. 123; Woodfall, 461—465. As to the application in redemption of land tax of a fund paid in under the Lands Clauses Act, see Dan. Pr. 1863; and *ante*, No. 2085, n. (*s*).

(*t*) See Dan. Pr. 1914. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*u*) See Ord. VI. 6; and *ante*, No. 197.

3. *Show that there is timber growing on the estate in a fit state to be cut; and that it is expedient to cut down sufficient to redeem the land tax.*

Your petitioner therefore humbly prays, as follows:

1. That he may be at liberty to cut down and sell such quantity of timber upon the said settled estates as shall be sufficient to redeem the land tax charged upon the said estates, and to defray the costs and expenses hereinafter mentioned;

2. That out of the proceeds of such sale the costs and expenses incurred in the surveying, valuing, and felling such timber, or otherwise on account of the sale thereof, and the costs of this application may be paid and satisfied;

3. That thereout also the land tax charged on the said estates may be redeemed;

4. And that the residue of such proceeds may be applied and disposed of in such manner as your lordship may please to direct.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

Section XIII.—The National Debt Act, 1870 (*x*).

2151. Petition, for the re-transfer of stock, and payment of dividends (*y*).

In Chancery.

(*Branch of Court* (*z*).)

Ex parte E. A. S., W. A. S., F. H. W., and A. E. W. [*or as may be*].

In the matter of the National Debt Act, 1870.

Address of petition: see ante, No. 56.

The humble petition of E. A. S., of, *&c.*, W. A. S., of, *&c.*, F. H. W., of, *&c.*, and A. E. W., of, *&c.*

(*x*) 33 & 34 Vic. c. 71, s. 55; Dan. Pr. 1915—1917. The former Unclaimed Stock Acts (56 Geo. 3, c. 60, s. 5; 8 & 9 Vic. c. 62; 24 & 25 Vic. c. 3, s. 8) are repealed by the Statute Law Revision Act, 1870 (33 & 34 Vic. c. 69), s. 1, and Sched.

(*y*) *Re Sanford:* petition presented under, and intituled in, the 56 Geo. 3, c. 60 (now repealed), and filed 22 Mar. 1867. For the order thereon, see V. C. W. 23 Feb. 1867, Reg. Lib. B. 584; and see S. C., W. N. (1867), 77. For order in like case, see Seton, 1106, No. 2. For orders for inquiry as to title, and for transfer and payment to a second claimant, see Seton, 1106, No. 1; 1107, No. 3. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*z*) See Ord. VI. 6; and *ante*, No. 197.

Showeth as follows:

[1—6. Statements showing that a sum of £266, bank 3*l.* per cent. annuities, was in 1803 purchased in the names of the trustees of a marriage settlement, upon certain trusts.]

7. The dividends upon the said bank annuities were duly received by the said trustees, and the survivor of them, down to and including the dividend due in respect thereof in the month of July, 1812: since which time no dividends have been received in respect thereof; and in the year 1822, in consequence of the dividends being unclaimed, the said sum of £266 bank annuities, and the dividends then due thereon were, in pursuance of the provisions of the said Act of Parliament (*z*), carried over, and have ever since been, and are now standing, to the account of the Commissioners for the reduction of the National Debt, in the books of the Governor and Company of the Bank of England.

[8—17. Statements showing that the petitioners F. H. W. and A. E. W. were the representatives of the surviving trustee of the marriage settlement; and that the other petitioners were beneficially entitled to the fund.]

Your petitioners therefore humbly pray, that: upon payment by your petitioners E. A. S. and W. A. S. to her Majesty's Attorney-General and the Commissioners for the reduction of the National Debt, of their costs of this application and relating thereto: to be taxed in case the parties differ: the said sum of £266, bank 3*l.* per cent. annuities, now standing to the account of the Commissioners for the reduction of the National Debt, in the books of the Governor and Company of the Bank of England, with all dividends accrued due thereon since the transfer of such stock to the said Commissioners, and the accumulations if any thereof, may be transferred and paid by the said Commissioners to your petitioners F. H. W. and A. E. W.: they undertaking to apply the same according to the trusts affecting the same.

Or that your lordship (*Concluding as in* No. 57, *ante; and foot note,* No. 58).

(*z*) 56 Geo. 3, c. 60.

Section XIV.—Property Law Amendment Act (*a*).

2152. Petition for the appointment of a nominee to surrender an existing lease, and to accept a new lease, on behalf of an infant, or married woman (*b*).

In Chancery.

(*Branch of Court* (*c*).)

In the matter of A. B., an infant, by C. D. his next friend;

Or, of A. B., the wife of E. B., by C. D. her next friend;

And in the matter of the Act 11th George the fourth and 1st William the fourth, chapter 65, intituled "An Act for consolidating and amending the law relating to property belonging to infants, femes covert, idiots, lunatics and persons of unsound mind" (*d*).

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of the above named A. B., by C. D., of (*residence and addition*), his [*Or*, her] next friend.

Showeth as follows:

1. *State the title of the petitioner to the beneficial interest in the lease proposed to be surrendered.*

2. *State why such surrender is deemed expedient; and on what terms the new lease is to be granted.*

Your petitioner therefore humbly prays, that the said C. D., or some other proper person, may be appointed, in the place of your petitioner, to surrender, by deed, the said indenture of lease of the ——, 18—; and to accept and take, in the place and for the benefit of your petitioner, a new lease of the premises comprised in the said indenture for and during the lives of N. O. and P. Q. [*or as may be*]: such surrender and new lease to be settled by the Judge (*e*).

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*a*) 11 Geo. IV. & 1 Will. IV. c. 65, ss. 12, 14, 31; Dan. Pr. 1917—1922. For order in like case, see Seton, 695, No. 1. As to these Acts, see Chambers on Infants, 456—459; Macpherson on Infants, 315—319; Seton, 695—698; Shelford's R. P. Acts, 396; Woodfall, 39.

(*b*) 11 Geo. IV. & 1 Will. IV. c. 65, ss. 12, 14—18, 20, 21, 31; Dan. Pr. 1917. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto. For the general practice as to motions, see Dan. Pr. 1437, *et seq.*; and see *ante*, No. 1734, *et seq.*, and notes thereto.

(*c*) See Ord. VI. 6; and *ante*, No. 197.

(*d*) As to the title, see Dan. Pr. 1918, n. (*y*).

(*e*) See Seton, 695; Dan. Pr. 1918. For the practice as to settling leases at Chambers, see Dan. Pr. 1141, 1142; and *ante*, No. 1336, *et seq.*, and notes thereto.

2153. Summons, for the like, in the case of an infant (*f*).

In Chancery.

(*Entitle the summons in the cause or matter in which the infant is a ward of Court, or wherein the administration of the estate of the infant, or his maintenance, is under the direction of the Court; and also in the matter of the Act: ante*, No. 2152.)

Let (*&c.: Proceed as in* No. 60, *ante, to* noon), on the hearing of an application on the part of the above named A. B., by C. D., of (*residence and addition*), his next friend, that the said C. D., or some other proper person, may be appointed, in the place of the said A. B., for the purposes following; namely:

1. To surrender, by deed, a certain indenture of lease dated the —— day of ——, 18—, made between G. H. of the one part, and L. M. of the other part: whereby certain premises situate at, *&c.*, were demised to the said L. M. for the lives of N. O. and P. Q., and the life of the longest liver of them [*or as may be*]; and the beneficial interest in which said indenture of lease is vested in the said A. B.

2. To accept and take, in the place and for the benefit of the said A. B., a new lease of the premises comprised in the said indenture of lease, for and during the lives of the said N. O. and P. Q. [*or as may be*].

And that such surrender and new lease may be settled by the Judge (*g*).

Dated (*&c.: Conclude as in* No. 60, *ante*).

2154. Petition, for the surrender of an existing lease, and grant of a new lease: where the reversion belongs to an infant, or a married woman (*h*).

Proceed as in No. 2152, *ante, to* as follows:

1. *State the title of the petitioner to the reversion of the lease proposed to be surrendered.*

2. *State why such surrender is deemed expedient; and on what terms the new lease is to be granted.*

Your petitioner therefore humbly prays, that he [*Or*, she] may be at liberty to accept a surrender of the said indenture of lease dated the ——, 18—; and to make and execute a new lease of the premises comprised in the said indenture for and during the lives of (*&c: Conclude as in prayer of* No. 2152, *ante*).

(*f*) See Dan. Pr. 1917; and notes to No. 2152, *ante*. An ordinary summons is sufficient: for the practice as to which see Dan. Pr. 1050, *et seq.*; and *ante*, No. 1123, *et seq.*, and notes thereto. As to when the application may be made by summons, see Ord. XXXV. 1 (5); Dan. Pr. 1917.

(*g*) See *ante*, No. 2152, n. (*e*).

(*h*) See 11 Geo. IV. & 1 Will. IV. c. 65, ss. 16, 20, 21, 31; Dan. Pr. 1919, 1921, 1922; and see notes to No. 2152, *ante*. As to who may petition, see s. 16; Dan. Pr. 1919. As to the power of the Court to authorise a renewal, where the person who ought to renew is out of the jurisdiction, see s. 18; and see 1 & 2 Vic. c. 62; and Dan. Pr. 1921.

2155.

Summons, for the like, in the case of an infant (*i*).

Proceed as in No. 2153, *ante, to* next friend :

that the said A. B. may be at liberty to accept a surrender of a certain indenture of lease (*Describe it : see ante*, No. 2153) ; and to make and execute a new lease of the premises comprised (*&c.: Conclude as in* No. 2153, *ante*).

2156.

Conditional contract to grant a lease of an infant's land (*j*).

See *ante*, No. 1450 : which can be readily adapted.

2157.

Petition, to carry the conditional contract into effect (*k*).

Proceed as in No. 2152, *ante, to* as follows :

1. *State the title of the infant to the hereditaments proposed to be demised : to show that the case falls within section* 17.

2. *State the material parts of the conditional contract for the lease : to show that the terms are such as can be sanctioned under section* 17.

Your petitioner therefore humbly prays, as follows :

1. That the said contract dated the ——, 187—, may be carried into effect.

2. That a proper lease in conformity with the said contract may be settled and approved by the Judge (*l*).

3. That your petitioner

Or, That the said C. D., the guardian of your petitioner, in the name of your petitioner,

may be at liberty to execute such lease when so settled.

4. That a counterpart of such lease may be executed by the said G. H., the lessee ; and be deposited for safe custody with the Clerks of the Records and Writs (*m*), until your petitioner attains his age of twenty-one years : with liberty to proper parties to have the use thereof in the mean time, for the pur-

(*i*) See *ante*, No. 2154, n. (*h*). As to when the application may be made by summons, see Ord. XXXV. 1 (5) ; Dan. Pr. 1919.

(*j*) See 11 Geo. IV. & 1 Will. IV. c. 65, ss. 17, 31 ; Dan. Pr. 1919—1921.

(*k*) *Ibid.* For forms of orders, see Seton, 695, No. 2 ; 696, Nos. 3, 4.

(*l*) See *ante*, No. 2152, n. (*e*).

(*m*) Substituted for the Master's Office : see Ord. XLII. 3 ; and see Dan. Pr 1920. For the mode of depositing documents in the Record and Writ Clerks Office, see Dan. Pr. 1698 ; and see *ante*, No. 1928, n. (*c*).

pose of enforcing any of the covenants therein contained.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

2158.
Summons, to carry into effect conditional contract to grant a lease of an infant's land (*n*).

Proceed as in No. 2153, *ante*, *to* next friend.

1. That the conditional contract dated the ——, 187—, entered into between E. F., on behalf of the said A. B., of the one part, and G. H. of the other part, for granting to the said G. H. a lease of certain land, therein described, which the said A. B. is seised or possessed of, or entitled to, in fee [*Or*, in tail—*or as may be*], may be carried into effect.

2—4. *Same as par.* 2—4 *in prayer of* No. 2157, *ante: substituting* "the said A. B." *for* "your petitioner."

2159.
Affidavit, in support of petition or summons to grant lease (*o*).

See *ante*, No. 1337, which can be readily adapted.

Section XV.—Fines and Recoveries Abolition Act (*p*).

2160.
Petition, for consent of Lord Chancellor, as protector of a settlement, in the place of a person under disability (*q*).

In Chancery.

(*Branch of Court* (*r*).)

In the matter of A. B., a person of unsound mind [*or as may be*].

And in the matter of the Act 3rd and 4th William the fourth, chapter 74, intituled "An Act for the abolition of fines and recoveries, and for the substitution of more

(*n*) See *ante*, No. 2156, n. (*j*). For order in like case, see *Francklin* v. *Edgell*, V. C. K. at Chambers, 14 Jan. 1864, Reg. Lib. A. 156. As to when the application may be made by summons, see Ord. XXXV. 1 (5); Dan. Pr. 1919.

(*o*) See Dan. Pr. 1920. For form of affidavit of examination of engrossments of lease and counterpart, see *ante*, No. 1339; and for form of memorandum of allowance or identity, see *ante*, No. 1340.

(*p*) 3 & 4 Will. IV. c. 74, s. 33; Dan. Pr. 1923—1924; and see Seton, 525; Shelford's R. P. Acts, 357, 368; Sugd. Stat. 236; Sugd. V. & P. 467.

(*q*) See Dan. Pr. 1924. For order in like case, see Seton, 522, No. 1. As to the jurisdiction of the Lords Justices, see 14 & 15 Vic. c. 83, s. 13; 15 & 16 Vic. c. 87, s. 15. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*r*) See Ord. VI. 6; and *ante*, No. 197.

simple modes of assurance."

Address to the L. C.: see ante, No. 56.

The humble petition of C. D., of (*residence and addition*).

Showeth as follows :

1. *State the limitations of the settled estate; and the manner in which the person under disability became protector of the settlement.*

2. *State the nature of the disability of such person.*

3. *State how the petitioner has become tenant in tail in the settled estate.*

4. Your petitioner is desirous of barring his estate tail in the said settled estate, and vesting the fee simple thereof in himself.

Your petitioner therefore humbly prays, that your lordship will be pleased : as protector of the settlement made by the said indenture of the ——, 18— [*or as may be*], in the place of the said A. B.: to consent to a disposition by your petitioner, under the provisions of the above mentioned Act of Parliament : for the purpose of barring the estate tail of your petitioner in the hereditaments comprised in the said indenture ; and that a proper deed for the purpose of barring such estate tail may be directed to be settled.

Or that your lordship (*Conclude as in* No. 57, *ante ; and add foot note*, No. 58).

Section XVI.—Investment on Real Securities in Ireland Act (*s*).

2161.

Petition, for leave to invest (*t*).

In Chancery.

(*Branch of Court* (*u*).)

In the matter of the trusts of the will of A. B., deceased [*or as may be*].

And in the matter of the Act 4th and 5th William the fourth, chapter 29, intituled "An Act for facilitating the loan of money upon landed securities in Ireland" (*x*).

(*s*) 4 & 5 Will. IV. c. 29 ; Dan. Pr. 1924—1925; Lewin, 266 ; Seton, 525.

(*t*) See Dan. Pr. 1925. For order in like case, see Seton, 525. As to the persons to be served with the petition, see Dan. Pr. 1925. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.* ; and see *ante*, No. 1742, *et seq.*, and notes thereto ; and for the practice on investments by the Court on mortgage, see *ante*, No. 1268, *et seq.*, and notes thereto.

(*u*) See Ord. VI. 6 ; and *ante*, No. 197.

(*x*) As to the title of the petition, see Dan. Pr. 1925.

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of C. D., of (*residence and addition*).

Showeth as follows:

1. *State such parts of the deed or will settling the trust fund as are material to the application.*

2. *State the present mode of investment of the fund proposed to be changed; and the rate of interest it produces.*

3. *State who are beneficially interested in the fund.*

4. *State the short particulars of the proposed investment; and its desirability.*

Your petitioner therefore humbly prays, that the said (*trustees*) may be authorised to sell so much of the said £——, bank 3*l.* per cent. annuities [*or as may be*], as will raise the sum of £—— ; and to lend the money to arise by such sale upon the security of a mortgage of the said real estates of the said G. H., situate at ——, in Ireland: to be held by them upon the same trusts as they now hold the said bank annuities [*or as may be*].

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

Section XVII.—Infant Custody Acts (*y*).

2162. Petition, for custody and access (*z*).

In Chancery.

(*Branch of Court* (*a*).)

In the matter of A. B. and C. B., infants.

And in the matter of the Act 2nd and 3rd Victoria, chapter 54, intituled "An Act to amend the law relating to the custody of infants."

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of D. B., the wife of E. B., of (*residence and addition*), by G. H., of, *&c.*, her next friend (*b*).

(*y*) 2 & 3 Vic. c. 54; Dan. Pr. 1926—1927. As to this Act, see also Chambers on Infants, 93—100; Macpherson on Infants, 164; Seton, 713, *et seq.* For forms of order under the Act, see Seton, 713, 714. See also 3 & 4 Vic. c. 90, as to the care of infant felons; Dan. Pr. 1927; Chambers, 178, 199; Macpherson, 133.

(*z*) See Dan. Pr. 1926. For orders in like case, see Seton, 713, *et seq.* For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*a*) See Ord. VI. 6; and *ante*, No. 197.

(*b*) The petition may be presented by the wife without a next friend; and, by leave of the Court, *in formâ pauperis*: Dan. Pr. 1926. As to *ex parte* applications under the Act, see *ib.*; and as to suing *in formâ pauperis*, see *ante*, No. 92, *et seq.*, and notes thereto.

Showeth as follows:

1. *State the marriage of the infants' parents; and the issue thereof.*

2. *State in whose custody the children are; and the grounds for seeking the interference of the Court.*

Your petitioner therefore humbly prays, as follows:

1. That the said E. B. may be ordered to permit your petitioner to have access to the said infant A. B.: at such times, and subject to such regulations, as your lordship shall deem convenient and just.

2. That the said E. B. may be ordered to deliver the said infant C. B. into the hands of your petitioner: until the said C. B. shall attain the age of seven years: subject to such regulations as your lordship shall deem convenient and just.

3. That the said E. B. may be ordered to pay the costs of, and incident to, this application.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

Section XVIII.—The Copyhold Acts, 1841, 1843, 1852, and 1858 (*c*).

2163.

Request for the Accountant-General's direction to pay compensation money into Court, to the account of the Copyhold Commissioners (*d*).

In the matter of the Copyhold Acts 1841, 1843, 1852, and 1858.

The Accountant-General is requested to prepare a direction, enabling A.B., of (*residence and addition*), to pay into the bank to his account there, "*Ex parte* the Copyhold Commissioners," the sum of £—— : being the amount of the compensation payable

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(*c*) Copyhold Act, 1841 (4 & 5 Vic. c. 35), ss. 73—75; Copyhold Act, 1843 (6 & 7 Vic. c. 23), s. 14; Copyhold Act, 1852 (15 & 16 Vic. c. 51), ss. 22, 39; and Copyhold Act, 1858 (21 & 22 Vic. c. 94), ss. 5, 13, 43—45; Dan. Pr. 1928—1930; see also the Universities and Colleges Estates Extension Act, 1860 (23 & 24 Vic. c. 59); Dan. Pr. 1930. By the Expiring Laws Continuance Act, 1867 (30 & 31 Vic. c. 143), the Copyhold, Inclosure, and Tithe Commission is continued to 1st Aug. 1872, and end of then next session. As to the Copyhold Acts, see Rouse's Enfranchisement Manual, *passim*; and for a table of fees to be taken under these Acts by the Commissioners, see W. N. (1869), Pt. II. 44.

(*d*) See Dan. Pr. 1928. No order to make the payment is necessary: *ib.* n. (*d*). For the mode of making payments into Court without an order, see *ib.* 1863. For form of direction, see *ante*, No. 2084.

by the said A. B., for enfranchisement from the rights of the lord of the manor of C., in the county of D., of certain lands belonging to the said A. B.

Dated (*&c.: Conclude as in* No. 2083, *ante*).

2164.
Petition, for investment of compensation, and payment of interest to trustees of the manor (*e*).

In Chancery.

(*Branch of Court* (*f*).)

In the matter of the settled estates of H. W., esquire.

And in the matter of the Copyhold Acts.

Address of petition: see ante, No. 56.

The humble petition of H. S. C., of, *&c.*, R. M. B., of, *&c.*, (*and others*).

Showeth as follows:

[1. Statement of a settlement, dated 15th December, 1856, of the manor of H., on H. W., for life; remainder to H. M. W. for life; remainders over.]

2. After the date and execution of the said indenture of settlement, and during the life of the said H. W., certain enfranchisements of hereditaments within, and held of, the said manor of H. were agreed upon and made, under and by virtue of the Copyhold Acts; and the following sums in respect thereof were paid into the Bank of England, to the account of the Accountant-General of this honourable Court, and to the credit of "*Ex parte* the Copyhold Commissioners"; and the same sums respectively still remain in the bank, to the credit and account aforesaid; that is to say: (*Specifying sums to the amount of* £583).

3. The said H. W. died on, *&c.:* leaving the said H. M. W., his eldest son in the said indenture of settlement named, him surviving: who is now an infant in the —— year of his age.

[4. Appointment of the petitioner R. M. B. to be a trustee of the settlement, jointly with the petitioner H. S. C.]

5. Your petitioners H. S. C. and R. M. B. are now in the actual receipt of the rents and profits of the said manor and hereditaments comprised in the said indenture of settlement, as trustees thereof, upon the trusts, and for the purposes, therein declared of and concerning the said manor and hereditaments, during the minority of the said H. M. W.

Your petitioners therefore humbly pray, as follows:

1. That the said sums making together £583 cash, part of the cash in the bank to the credit of "*Ex parte* the Copyhold Commissioners," may be carried over to the credit of "In the matter of the Copy-

(*e*) *Re Weston:* petition filed 25th April, 1867. For orders in like case, see Seton, 1094—1096; and see Dan. Pr. 1928—1930. As to service of the petition, see Dan. Pr. 1929. For the general practice as to petitions, see *ib.* 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*f*) See Ord. VI. 6; and *ante*, No. 197.

hold Acts—The account of the lord of the manor of H. in S., under settlement of 15th December, 1856," subject to further order.

2. That it may be referred to the Taxing Master to tax your petitioners, and the Copyhold Commissioners, their costs of this application, and consequent thereon: as between solicitor and client; and that out of the said £583, when carried over, the said costs may be paid to the solicitors of the parties.

3. That the residue (to be certified by the Taxing Master) of the said £583 cash may be laid out in the purchase of bank 3*l.* per cent. annuities.

4. That the interest to accrue on such annuities, during the minority of the said H. M. W., or until further order, may from time to time be paid to your petitioners H. S. C. and R. M. B., or to one of them, upon the trusts of the said indenture of settlement of the 15th December, 1856.

Or that your lordship (*Concluding as in* No. 57, *ante, to the end*; *and foot note*, No. 58).

Section XIX.—Acts relating to Ecclesiastical Estates (*g*).

2165. Petition, by a lessee for lives, for payment of income of a fund in Court representing the demised land taken by a railway company: the reversion belonging to a capitular estate vested in the Ecclesiastical Commissioners (*h*).

In Chancery.

(*Branch of Court* (*i*).)

In the matter of the estate of T. B., deceased.

In the matter of the Act (*Special Act of a Railway*).

And in the matter of the Lands Clauses Consolidation Act, 1845.

Address of the petition: see ante, No. 56.

The humble petition of W. A. B., of (*residence and addition*).

(*g*) See 5 & 6 Vic. c. 26, ss. 8, 12; 14 & 15 Vic. c. 104, s. 7; 23 & 24 Vic. c. 124, s. 29; Dan. Pr. 1930—1933; and Cripps' Laws of the Church, 46, *et seq.*; Seton, 1100, *et seq.*; and for forms of orders thereunder, see Seton, 1098, *et seq.* The Acts relating to the management of episcopal and capitular estates are continued by the 33 & 34 Vic. c. 103 to the 1st Jan. 1871, and end of then next session.

(*h*) *Re Brailey*, V. C. W. 10 Mar. 1866, Reg. Lib. A. 1533: W. N. (1866), 109. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*i*) See Ord. VI. 6; and *ante*, No. 197.

Showeth as follows:

1. By an indenture of lease dated, *&c.*, and made between the Dean of St. P. E., of the one part, and W. B. of the other part, certain lands therein described were granted and demised by the said Dean to the said W. B., his heirs and assigns, for the lives of M. B., J. H., and E. B., therein respectively described, and the life of the longest liver of them: at the yearly rent thereby reserved, and under the covenants therein mentioned.

2. By divers assurances and acts in the law, the estate and interest of the said W. B. and his heirs, under the said lease, became vested in T. B.

3. By the statutes relating to cathedral endowments, and an order of Her Majesty in Council dated, *&c.*, duly published in the London Gazette, the said lands became vested in the Ecclesiastical Commissioners of England, subject to the said lease (*k*).

4. The N. D. R. Company having required the said lands for the purposes of their works, under the powers of the said (*Special Act*), and the Lands Clauses Consolidation Act, 1845, incorporated therewith, two able practical surveyors: authorised in that behalf by the said company, the said Ecclesiastical Commissioners, and the said T. B., respectively: by their valuation in writing determined that the amount of the purchase money for the inheritance in fee of the said lands was £A.: including therein the value of the leasehold interest of the said T. B.; and which sum of £A. was paid by the said company into the bank, with the privity of the Accountant-General of this honourable Court, to the credit of an account entitled, "*Ex parte* the N. D. R. Company.—In the matter of the N. D. R. Act;" and the said Ecclesiastical Commissioners and the said T. B. have duly conveyed the said lands to the said company.

5. By an order dated, *&c.*, made on the petition of the said Ecclesiastical Commissioners and the said T. B., the said £A. was directed to be laid out in bank 3*l.* per cent. annuities, in trust in the matter of *Ex parte* the N. D. R. Company, to an account entitled "The account of the Ecclesiastical Commissioners for England and T. B.;" and it was ordered that the interest to accrue on the said annuities should be paid to the said T. B. during the lives of the said M. B., J. H., and E. B., and the life of the longest liver of them, or until further order.

6. Pursuant to the said order, the said £A. was laid out in the purchase of £B., bank 3*l.* per cent. annuities, in trust in the last mentioned matter and account; and the said T. B. received the half yearly dividends which accrued on the said bank annuities down to and inclusive of the 5th day of July, 1864.

7. The said J. H. died on, *&c.* The said M. B. and E. B. are both living.

[8. Death of T. B.; and grant of administration of his personal estate to the petitioner.]

(*k*) See 23 & 24 Vic. c. 124, ss. 2—12.

9. The said £B. bank annuities, and also the sum of £C. cash: being the amount of dividends accrued since the said 5th July, 1864: are now remaining on the credit of the said matter and account.

Your petitioner therefore humbly prays, as follows:

1. That the said £C. cash may be paid to your petitioner W. A. B.

2. That the interest to accrue, during the lives of the said M. B. and E. B., and the life of the longest liver of them, on the said £B. bank 3*l.* per cent. annuities may be paid to your petitioner W. A. B., as legal personal representative of the said T. B., or until further order.

3. That the said N. D. R. Company may be ordered to pay to your petitioner, and the said Ecclesiastical Commissioners, their costs, charges, and expenses of this application, and consequent thereon: to be taxed by the Taxing Master.

Or that your lordship (*Concluding as in* No. 57, *ante; and foot note*, No. 58).

Section XX.—The Defence Acts, 1842, 1860, and 1864 (*l*).

2166. Summons, for investment of compensation paid in by the War Department, and for payment of income to a tenant for life (*m*).

In Chancery.

In the matter of the estate of A. B., deceased [*or as may be*].

And in the matter of the Defence Act, 1860.

Let (*&c.: Proceed as in* No. 1123, *ante*, *to* noon), on the hear-

(*l*) Defence Act, 1842 (5 & 6 Vic. c. 94), ss. 25—28; amended by the Ordnance Board Transfer Act, 1855 (18 & 19 Vic. c. 117); 22 & 23 Vic. c. 21, s. 8; Defence Act, 1860 (23 & 24 Vic. c. 112), ss. 20—24, 29, 45; Defence Act Amendment Act, 1864 (27 & 28 Vic. c. 89). As to these Acts, see Dan. Pr. 1934—1937; Seton, 1091, *et seq.* The practice as to the payment in of compensation under these Acts is the same as in the case of payments in under the Lands Clauses Consolidation Act: as to which see Dan. Pr. 1861, *et seq.*; and *ante*, No. 2083, *et seq.*, and notes thereto. As to service of notices on or by the Secretary of State for War, see 23 & 24 Vic. c. 112, s. 45; Dan. Pr. 1937.

(*m*) 5 & 6 Vic. c. 94, s. 25; amended by 22 & 23 Vic. c. 21, s. 8; 23 & 24 Vic. c. 112, ss. 23, 46; Dan. Pr. 1935, 1936. An original application at Chambers under these Acts is made by summons, in the form used for originating proceedings there: in other cases, by an ordinary summons. For the practice on summons, see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

ing of an application on the part of C. D., of (*residence and addition*):

1. That the costs of the applicant of this application may be taxed, as between solicitor and client; and may be paid to his solicitor out of the £A. cash in the bank on the credit of, "In the matter of the Defence Act, 1860—The account of the devisees under the will of A. B., deceased" [*or as may be*]: being money paid into the bank to the said credit by Her Majesty's Principal Secretary of State for the War Department, as compensation for certain lands settled by the will of the said A. B. [*or as may be*], required to be taken, and kept free from buildings, for the purposes of the Defence Acts, and any damage sustained in respect thereof [*or as may be*], and as an equivalent for the expenses consequent on such payment.

2. That the residue of the said £A. may be laid out in the purchase of bank 3*l.* per cent. annuities [*or as may be*], in trus in the said matter and account.

3. That the interest to accrue on the said bank annuities during the life of the applicant C. D. may be from time to time paid to him, or his legal personal representative, until further order.

Dated (*&c.: Conclude as in* No. 1123, *ante: including the footnote*).

2167.
Affidavit in support (*n*).

Formal parts: see ante, No. 9.

1. *State the settlement of the lands in question: see ante*, No. 2085, *par.* 1, 2.

2. *State what lands were required by the War Department to be taken and kept free from buildings, &c.; as thus:* On or about the —— day of ——, 187—, Her Majesty's Principal Secretary of State for the War Department gave notice that certain lands situate in the parish of M., in the county of K., particularly specified in the first schedule to such notice, were required to be taken absolutely for the construction of works, under the powers and provisions of the Defence Act, 1860; and that certain other lands situate in the said parish, and specified in the second schedule to such notice, were required to be kept free from buildings and other obstructions, for the purposes of the said Act. The lands so required to be taken absolutely contained together by admeasurement — a. — r. — p., or thereabouts; and the lands so required to be kept free from buildings contained by admeasurement — a. — r. — p., or thereabouts; and all the said lands were part of the estates devised by the will of the said A. B. [*or as may be*].

3. *State how the amount of compensation has been determined; as thus:* By an agreement dated, *&c.*, made between me, the deponent, as devisee for life under the said will [*or as may be*], of the one part, and the said Principal Secretary of State of the

(*n*) See *ante*, No. 2166, n. (*m*)

other part, it was agreed that the sum of £A. should be the amount of the compensation to be paid for the lands so required to be taken, and kept free from buildings, and any damage sustained in respect thereof (*o*).

4. *State the payment of the compensation into Court; as thus:* On or about the —— day of ——, 187—, the said sum of £A.: together with £30 as an equivalent for the expenses consequent upon such payment, as provided by the Defence Act, 1860 (*p*): was paid by the said Principal Secretary of State into the bank, in the name and with the privity of the Accountant-General of this honourable Court, to the credit of "In the matter of the Defence Act, 1860—The account of the devisees under the will of A. B., deceased" [*or as may be*].

5. *Negative right of any other person: see ante*, No. 2089, *par.* 2.

2168.

Summons, for investment of fund in the purchase of real estate (*q*).

See prayer of No. 2086, *ante:* which can be readily adapted.

2169.

Petition for transfer and payment of fund to absolute owner (*r*).

See statements in No. 2167, *ante*, and the prayer of No. 2045, *ante:* which can be readily adapted.

(*o*) See 23 & 24 Vic. c. 112, ss. 10, 11.

(*p*) *Ibid.* s. 21; Dan. Pr. 1934.

(*q*) See *ante*, No. 2166, n. (*l*).

(*r*) See *ibid.*; and Dan. Pr. 1935. For the general practice as to petitions, see *ib.* 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

Section XXI.—Drainage and Improvement of Land Acts (*s*).

2170.
Summons, for directions that the Inclosure Commissioners may proceed with improvements, notwithstanding dissent (*t*).

In Chancery.

In the matter of the settled estates of A. B., deceased [*or as may be*].

And in the matter of the Improvement of Land Act, 1864.

Let (*&c. : Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of C. D., of (*residence and addition*), that the Inclosure Commissioners for England and Wales may be authorised to entertain and proceed with the application which has been made to them by the said C. D., for their sanction to (*Describe the proposed improvement*), under the provisions of the above mentioned Act : notwithstanding the dissent from such application of E. F. [*or other circumstance*]. Dated (*&c. : Conclude as in* No. 1123, *ante : including the foot note*).

Section XXII.—Inclosure Act (*u*).

2171.
Petition for application of fund paid into Court under the Inclosure Act (*x*).

The forms given *ante*, Nos. 2085—2089, of applications under the Lands Clauses Consolidation Act, and *ante*, No. 2164, of an application under the Copyhold Acts, can readily be adapted to an application by petition under the 8 & 9 Vic. c. 118. The title of such a petition may run thus :

In the matter of the settled estates of A. B., deceased [*or as may be*].

And in the matter of the Acts for the Inclosure, Exchange, and Improvement of Land (*y*).

(*s*) 10 & 11 Vic. cc. 11, 38; 11 & 12 Vic. c. 119 ; 13 & 14 Vic. c. 31 ; 19 & 20 Vic. c. 9; 27 & 28 Vic. c. 114; 33 & 34 Vic. c. 56. As to these Acts, see Cooke on Inclosures, *passim ;* and as to the continuance of the Inclosure Commission, and as to the fees to be taken thereunder, see *ante*, No. 2163, n. (*c*).

(*t*) Improvement of Land Act, 1864 (27 & 28 Vic. c. 114), s. 21 ; Dan. Pr. 1937. The application is made by an originating summons : for the practice as to which see Dan. Pr. 1050, *et seq.;* and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*u*) 8 & 9 Vic. c. 118, ss. 134, 137—140 ; Dan. Pr. 1939 ; and see *ante*, No. 2170, n. (*s*).

(*x*) *Ibid.* For the general practice as to petitions, see Dan. Pr. 1451, *et seq.;* and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*y*) 15 & 16 Vic. c. 79, s. 34.

Section XXIII.—The Merchant Shipping Acts, 1854 and 1855 (*z*).

2172. Petition for sale of a ship, or of share of a ship, vested by transmission in an unqualified owner (*a*).

In Chancery.

(*Branch of Court* (*b*).)

In the matter of the ship "City of London [*or as may be*].

And in the matter of the Merchant Shipping Act, 1854.

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

1. *State the registry in England of the ship, or share of ship, to which the petition relates.*

2. *State how the property in such ship or share has become vested by transmission on the death of an owner, or on the marriage of a female owner, in the petitioner; and that he is a person not qualified to be an owner of a British ship.*

Your petitioner therefore humbly prays, as follows:

1. That the said ship [*Or*, share] may be directed to be sold, and the proceeds thereof paid to your petitioner, or otherwise disposed of in such manner as your lordship may please to direct.

2. That the right to transfer the said ship [*Or*, share] to the purchaser thereof may be declared to be vested in C. D., of (*residence and addition*); or in such other person as your lordship may please to direct.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

(*z*) Merchant Shipping Act, 1854 (17 & 18 Vic. c. 104), ss. 62—65, 514 Merchant Shipping Amendment Act, 1855 (18 & 19 Vic. c. 91), s. 10; Merchant Shipping Amendment Act, 1862 (25 & 26 Vic. c. 63). As to these Acts, see Dan. Pr. 1937—1941; and Add. Cont. 136—138; Maude and Pollock, 26—28; 6 Petersdorff's Abr. 430, *et seq.*; Seton, 933, *et seq.*; Smith's Merc. Law, 172—192. As to the relief in Chancery, where several claims are made against the owner of a ship, see 17 & 18 Vic. c. 104, s. 514; Dan. Pr. 1941; and for form of bill in like case, see *post*, No. 2233. As to the jurisdiction at law, see the Common Law Procedure Act, 1860 (23 & 24 Vic. c. 126), s. 35; and in the Court of Admiralty, see the Admiralty Court Act, 1861 (24 & 25 Vic. c. 10), s. 3.

(*a*) See 17 & 18 Vic. c. 104, ss. 62—64; Dan. Pr. 1939, 1940. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No 1742, *et seq.*, and notes thereto.

(*b*) See Ord. VI. 6; and *ante*, No. 197.

2173.
Motion paper, for interim order to prohibit the dealing with a ship, or share of a ship (*c*).

Formal parts : see ante, No. 53.

To move on behalf of A. B., of (*residence and addition*), that any dealing with the ship [*Or*, the share of C. D. of the ship] called the —— may be prohibited until, *&c.*, *&c.*

2174.
Petition, to prohibit a like dealing (*c*).

Proceed as in No. 2172, *ante, to the end of par.* 1.

2. *State the interest of the petitioner in the ship or share ; and the grounds for requiring the interposition of the Court.*

Your petitioner therefore humbly prays, that any dealing with the said ship [*Or*, share] may be prohibited until, *&c.*, *&c.*

Or that your lordship (*Conclude as in* No. 57, *ante ; and add foot note*, No. 58).

Section XXIV.—Law of Property and Trustees Relief Amendment Acts (*d*).

2175
Petition to establish sale under a power where part of purchase-money has been erroneously paid to a tenant for life (*e*).

In Chancery.

(*Branch of Court* (*f*).)

In the matter of the settled estates of A. B. [*or as may be*].

And in the matter of the Act 22nd and 23rd Victoria, chapter 35, intituled "An Act to further amend the law of property, and to relieve trustees."

Address of the L. C., or M. R. : see ante, No. 56.

The humble petition of C. D., of (*residence and addition*).

(*c*) See 17 & 18 Vic. c. 104, s. 65; Dan. Pr. 1940. For interim order on *ex parte* motion under s. 65, see *Re City of Mobile*, V. C. S. 11 Dec. 1866, Reg. Lib. A. 2590; and for further order, discharging (by consent) the interim order, see S. C., V. C. S. 24 Dec. 1866, Reg. Lib. A. 2679. As to injunctions in the case of ships, see Dan. Pr. 1503; and *ante*, No. 1769, and note thereto. The jurisdiction under s. 65 may now be exercised by the Court of Admiralty : see 24 & 25 Vic. c. 10, s. 12.

(*d*) 22 & 23 Vic. c. 35, ss. 13, 30; 23 & 24 Vic. c. 38, s. 19; Ord. 20 Mar. 1860; and Dan. Pr. 1942—1945.

(*e*) See 22 & 23 Vic. c. 35, s. 13; Dan. Pr. 1942; Lewin, 320; Sugd. Pow. 561; Sugd. Stat. 315; Sugd. V. & P. 502. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*f*) See Ord. VI. 6; and *ante*, No. 197.

Showeth as follows :

1. *State the settlement of the estate in question.*

2. *State the sale thereof, with the timber thereon, or other articles attached thereto.*

3. *State the manner in which the purchase money has been paid: showing that the tenant for life, or other party to the transaction, has erroneously received for his own benefit a portion of the purchase money as the value of the timber or other articles.*

Your petitioner therefore humbly prays, as follows :

1. That it may be declared that, upon payment by him [*Or*, by the said purchaser E. F.] of the full value of the said timber and articles [*or as may be*], at the time of the said sale thereof : with such interest thereon as your lordship may please to direct : and the settlement of the said principal monies and interest under the direction of this honourable Court, upon such parties as in the opinion of your lordship shall be entitled thereto, the said sale ought to be established.

2. That upon such payment and settlement as aforesaid being made, the said sale may be declared to be valid.

3. That the costs of this application, as between solicitor and client, may be paid by your petitioner [*Or*, by the said E. F.].

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

2176.

Summons, to establish a sale under a power (*g*).

In Chancery.

In the matter (*&c. : as in* No. 2175, *ante*).

Let (&c.: *Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of C. D., of (*residence and addition*) :

1. That (*&c. : Adapt the prayer of* No. 2175, *ante*).

Dated (*&c. : Conclude as in* No. 1123, *ante : including the foot note*).

(*g*) See 22 & 23 Vic. c. 35, s. 13 ; Dan. Pr. 1942. The application is made by an originating summons : for the practice as to which see Dan. Pr. 1050, *et seq.* ; and see *ante*, No. 1123, *et seq.*, and notes thereto.

2177.
Petition, for a judicial opinion, advice, or direction (*h*).

In Chancery.

(*Branch of Court* (*i*)).

In the matter of (*Describe the particular trust, will, or administration* (*k*)*; as thus:*

the trusts of the marriage settlement of A. B. and C. his wife, dated, *&c.*

Or, the will of A. B., deceased.

Or, the administration of the estate of A. B., deceased).

And in the matter of the Act (*&c.: as in* No. 2175, *ante*).

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of E. F., of (*residence and addition*), and G. H., of, *&c.* (*l*).

Showeth as follows:

1.
2.
3. } (*State the facts, concisely: divided into paragraphs, numbered consecutively* (*m*).)

The opinion, advice, or direction of this honourable Court is desired upon the following questions:

1. Whether
2. Whether
3. Whether
4. Whether } (*State the questions respecting the management or administration of the trust property, or the assets of the testator or intestate, upon which an opinion, &c., is desired.*)

5. In what manner the costs of this application should be paid or provided for (*n*).

(*Signature of counsel* (*o*).)

(*h*) See 22 & 23 Vic. c. 35, s. 30; 23 & 24 Vic. c. 38, s. 10; Ord. 20 Mar. 1860; and Dan. Pr. 1942—1945; Lewin, 442, 443; Seton, 774; Sugd. Stat. 321. For a judicial opinion on petition, see *Re Kensington Proprietary School*, M. R. 30 July, 1870, Reg. Lib. A. 2638. As to the jurisdiction of the County Courts, see 28 & 29 Vic. c. 99, s. 1; and County Court Orders, 1867: Ord. in Eq. XI. rr. 1—3, 20—25: Sched. Forms in Eq. No. 8 (W. N. (1869), Pt. II. 33, 34, 168); Pollock & Nicol, 272; Dan. Pr. 1943, n (*c*).

(*i*) See Ord. VI. 6; Ord. 20 Mar. 1860, r. 1; and *ante*, No. 197.

(*k*) As to the title, see Ord. 20 Mar. 1860, r. 1; Dan. Pr. 1944.

(*l*) As to who may apply, and on whom the petition or summons is to be served, see Dan. Pr. 1942, 1944.

(*m*) Ord. 20 Mar. 1860, r. 1; Dan. Pr. 1944.

(*n*) See 22 & 23 Vic. c. 35, s. 30; Dan. Pr. 1943, 1945. As to the costs, see Ord. 20 Mar. 1860, r. 5; and see *ante*, No. 1557.

(*o*) See 23 & 24 Vic. c. 38, s. 9; Dan. Pr. 1944.

2178.

Summons, for a judicial opinion, advice, or direction (*p*).

In Chancery.

In the matter (*&c.: as in* No. 2177, *ante*).

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of E. F., of (*residence and addition*), and G. H., of, *&c.:* the trustees of the above mentioned settlement [*or as may be*]: for the opinion, advice, or direction of the Judge on the facts and questions submitted by their statement left in my chambers this day.

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

2179.

Statement in support (*q*).

Proceed as in No. 2177, *ante, to the end of the title: and continue thus:*

Statement of E. F., of, *&c.*, and G. H., of, *&c.*, for the opinion, advice, or direction of his lordship the Master of the Rolls [*Or*, of his honour the Vice-Chancellor Sir ——], under the provisions of the above mentioned Act.

1. } (*State the facts, concisely: divided into paragraphs, num-*
2. } *bered consecutively; and the questions: as in* No. 2177,
3. } *ante.*)

(*Signature of counsel* (*r*).)

(*p*) See Dan. Pr. 1942, 1944. For judicial opinions on summons, see *Re Browne*, M. R. at Chambers, 14 Jan. 1864, Reg. Lib. A. 37; *Re Faning*, V. C. S. at Chambers, 19 Feb. 1864, Reg. Lib. A. 328. The application at Chambers is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*q*) See 23 & 24 Vic. c. 38, s. 9; Dan. Pr. 1942, 1944. As to the filing of the statement, and passing and entering the opinion, &c., see *ib.*; Ord. 20 Mar 1860, r. 4; Dan. Pr. 1945.

(*r*) See 23 & 24 Vic. c. 38, s. 9; Dan. Pr. 1944.

Section XXV.—The Land Transfer Act (*s*).

2180.

Preliminary order for inquiry: preparatory to a sale by the Court, with an indefeasible title (*t*).

Date—title—and introduction.

And this Court being of opinion that it will be for the benefit of the parties interested in the said estate that the same should be sold with an indefeasible title, free from incumbrances, it is ordered that an inquiry be made as to the title to the said estate; and whether the same is such that it will be proper that this Court should authorise a sale of the said estate with an indefeasible title, free from incumbrances. And it is ordered that the further hearing of the petition be adjourned.

2181.

Advertisement or notice of intended sale thereunder (*u*).

In Chancery.

(*Short titles of causes.*)

And in the matter of the Act 25th and 26th Victoria, chapter 53.

Notice is hereby given, that in pursuance of an order dated 11 March, 1864 (*x*), made by this honourable Court on the petition of (*Names, residences, and additions of petitioners*), it is intended, at the expiration of three calendar months from the date hereof, to sell, with an indefeasible title, all that the manor or lordship of A., in the county of L., with the rights, *&c., &c.;* and which hereditaments are delineated on the map deposited by the applicants with the Clerk of Records and Writs to whose division the said causes are attached, at the Record and Writ Clerks' office of the Court of Chancery, Chancery Lane, in the county of Middlesex, as part of the description of the same, and therein

(*s*) 25 & 26 Vic. c. 53, Pt. II.; General Orders, Directions and Forms of the Land Registry, practically arranged: W. N. (1866), Pt. II. 223, *et seq.:* 12 Jur. N. S. Pt. II. 222, *et seq.;* Gen. Ord. Land Registry, 27 July, 1866; Dan. Pr. 1946—1957. No General Orders under this Act have yet been made by the Court of Chancery: Dan. Pr. 1946, n. (*l*), 1951, n. (*r*), 1956, n. (*d*).

(*t*) See 25 & 26 Vic. c. 53, s. 43; Dan. Pr. 1946. For order in like case, see *Bradish* v. *Ellames*, V. C. K. 11 Mar. 1864, Reg. Lib. A. 603: 10 Jur. N. S. 1231; S. C. *nom. Re Ellames*, 13 W. R. 170, V. C. K.; and see *post*, No. 2182. For the practice as to sales of land by the Court with an indefeasible title, see 25 & 26 Vic. c. 53, ss. 4, 41—61; Dan. Pr. 1946—1951.

(*u*) *Bradish* v. *Ellames, ubi sup.:* London Gazette, 8 May, 1866. For the form of advertisement or notice in use in the office of Land Registry, see Land Registry Ord. No. 61: W. N. (1866), Pt. II. 227: 12 Jur. N. S. Pt. II. 227 and see 25 & 26 Vic. c. 53, ss. 11, 12; and Dan. Pr. 1947, n. (*q*).

(*x*) *Ante*, No. 2180.

coloured pink ; together with the mines and minerals under the same hereditaments.

If any person objects to, or desires to show cause against, such sale, with an indefeasible title as aforesaid, or claims that the same should be subject to any conditions or reservations, such person may be heard to make such objection, or to show cause against, or to make such claim in respect of, such sale as aforesaid, at the Chambers of the Vice-Chancellor Kindersley, to whose Court the said causes are attached, situate, *&c.*, on Saturday, the 7th day of July, 1866, at twelve of the clock at noon of the same day : when the said Judge will proceed to settle the conditions of the proposed sale : or at any other time before the expiration of the said three calendar months from the date hereof, on taking out a summons, and serving a copy thereof on the solicitors to the applicants, in the usual way. But any person desiring to make such objection or claim as aforesaid, and not attending for that purpose at the place, on the day, and at the time hereinbefore appointed for that purpose, must issue his summons before the expiration of the said three calendar months from the date hereof. And every person omitting to make any such objection or claim, or to show any such cause, in manner aforesaid, will be excluded from making such objection or claim, or showing such cause as aforesaid.

The said map of the said hereditaments deposited in the said Record and Writ Clerks' office may be inspected at such office : or a copy thereof may also be inspected at the offices of the solicitors for the applicants : at any time before the expiration of the said three calendar months.

Dated, *&c.*

F. E. E., Chief Clerk.

F. R. F. & F., of, *&c.*, Agents for E. S. P. & L., of, *&c.*, Solicitors for the petitioners.

2182.

Final order, for a sale by the Court, with an indefeasible title (*y*).

Date—title—and introduction.

This Court doth order that the said A. H. estate, as described in the Chief Clerk's certificate dated, *&c.* (other than the hereditaments comprised in the contract dated, *&c.*) : with an indefeasible title thereto : be sold with the approbation of the Judge ; and that the money to arise from the said sale be paid into the bank, with the privity of the Accountant-General, to the credit of "Bradish *v.* Ellames, 1857, B. 22 : Sale of A. H. estate."—Direction for taxation and payment of subsequent costs.

(*y*) *Bradish* v. *Ellames*, V. C. M. 30 Jan. 1868, Reg. Lib. A. 418 (on petition) ; and see 25 & 26 Vic. c. 53, s. 43 ; Dan. Pr. 1947 ; and *ante*, Nos. 2180, 2181.

2183.
Summons, for directions of a Judge at Chambers (*z*).

In Chancery.

In the matter of A. B.

And in the matter of the Act 25th & 26th Victoria, chapter 53, intituled "An Act to facilitate the transfer of land."

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of A. B., of (*residence and addition*), that (*State the precise object of the application* (*a*).)
Dated (*&c.: Conclude as in* No. 1123, *ante*).

2184.
Application to register with an indefeasible, or a qualified, title: in pursuance of a direction of the Court (*b*).

Land Registry.

In the matter of the Act of the 25th & 26th Victoria, cap. 53; and of the application of A. B.

A. B., of (*residence and addition*), hereby requires the Registrar of the Office of Land Registry to enter his name on the register, as the proprietor of the lands referred to in the order, an office copy of which accompanies this application, with an indefeasible [*Or*, qualified] title, in pursuance of the direction of the Court of Chancery.

Dated, *&c.*

(*Signature of A. B., or his solicitor.*)

2185.
Caveat, before registration (*c*).

Land Registry.

In the matter of the Act of the 25th & 26th Victoria, cap. 53.

I, E. F., of (*residence and addition*), have [*Or*, claim to have: *Insert the estate or interest in the land which the cautioner has, or claims to have*] in the estate called ——, in the parish of ——, in the county of ——: consisting of the following farms; viz.:

(*z*) See 25 & 26 Vic. c. 53, s. 134; Dan. Pr. 1956. The application is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto. As to the various applications which may be made to the Court by summons under this Act, see Dan. Pr. 1951—1957, 2023, 2024. The duties vested in the Court by this portion of the Act were, in Michaelmas Term, 1862, assigned, under s. 121, by the Lord Chancellor to the Master of the Rolls: Dan. Pr. 1951, n. (*r*).

(*a*) For illustrations, see Dan. Pr. 2023, 2024.

(*b*) Land Registry Ord. Nos. 103—107: W. N. (1866), Pt. II. 231: 12 Jur. N. S. Pt. II. 237; and see 25 & 26 Vic. c. 53, ss. 25, 57; Dan. Pr. 1950, 1952, 1953.

(*c*) Land Registry Ord. Nos. 90—92: W. N. (1866), Pt. II. 229, 230: 12 Jur. N. S. Pt. II. 236; 25 & 26 Vic. c. 53, ss. 35—40, 96, 98—100; Dan. Pr. 1953—1955.

[*Or*, all that house, No. —, *&c.—as the case may be:*]
and of which A. B. is now in possession;
[*Or*, receipt of the rents and profits;]
and am entitled to notice of any application that may be made
[by C. D., of ——, in the county of ——,]
for registration of the title to the said estate, or any part thereof.
[*Or*, the said house—*Or*, land—*as the case may be.*]
My address for service of notice is ——, in the parish of ——, in the county of ——.
Dated, *&c.*
(*Signature of the cautioner, or his solicitor.*)

SECTION XXVI.—THE DECLARATION OF TITLE ACT, 1862 (*d*).

2186.
Petition, for a declaration of title (*e*).

In Chancery.
In the matter of A. B.
And in the matter of "The Declaration of Title Act, 1862."
Address to the L. C., or M. R.: see ante, No. 56.
The humble petition of A. B., of (*residence and addition* (*f*).)
Showeth as follows:
1. *Show the nature of the estate or interest of the petitioner in the lands respecting which the declaration is sought.*
2. *Set out an exact description, in their actual state, of the lands*

(*d*) 25 & 26 Vic. c. 67; Dan. Pr. 1957–1966. No General Orders under this Act have yet been made by the Court of Chancery: Dan. Pr. 1957, n. (*l*).

(*e*) See 25 & 26 Vic. c. 67, s. 1; Dan. Pr. 1957, *et seq.* For petition in like case, see *Re Roberts:* petition filed 21 Feb. 1870; and for the order thereon, directing an inquiry as to the petitioner's title, see S. C. 12 Feb. 1870, Reg. Lib. B. 308, V. C. J. For further order (on the Chief Clerk's certificate in favour of the title), directing the declaration establishing the petitioner's title to be made at the end of three months—security for costs to be given—and notice of the order to be advertised three times, at three days' interval, in each of three London newspapers (the property being in London), see S. C. 23 June, 1870, Reg. Lib. B. 2479: Law Rep. 10 Eq. 402, V. C. J. And for the final order, establishing the title, see S. C. 9 Dec. 1870, Reg. Lib. B. 3024: W. N. (1870), 242, V. C. B.; and see Dan. Pr. 1959, nn. For form of the advertisement, see *post*, No. 2187. For the general practice on petitions, see Dan. Pr. 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto; and as to proceedings on a petition under this Act, see 25 & 26 Vic. c. 67, s. 5, *et seq*; and Dan. Pr. 1958, *et seq.*

(*f*) As to who may petition, see 25 & 26 Vic. c. 67, ss. 1, 3; Dan Pr. 1957.

as to which the declaration is sought: stating particularly the boundaries thereof, and the lands on which the same and every part thereof abut; and, so far as conveniently may be, the names and descriptions of the owners and occupiers of such last mentioned lands (*g*).

3. *State what incumbrances, estates, rights, and interests, if any, the petitioner admits to affect his title, and subject to which he seeks to have his title declared* (*h*).

Your petitioner therefore humbly prays, that it may be declared that under the provisions of the said Act of Parliament your petitioner is entitled to the lands hereinbefore described for an absolute estate of inheritance in fee simple in possession, free from incumbrances [*or as may be; and state any restrictions, reservations or qualifications* (*i*)].

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note*, No. 58).

2187.
Affidavit that all documents have been produced (*k*).

In Chancery.

(*Title.*)

We, A.B., of (*residence and addition*), the petitioner in this matter, and C. D., of (*place of business*), the solicitor in this matter for the said A. B., severally make oath and say, as follows:

1. To the best of our respective knowledge, information, and belief, all settlements, deeds, documents, instruments, maps, plans and papers relating to the title to the land in question in this matter have been produced to this honourable Court, or the cause of their non-production has been fully and fairly explained; and all facts material to the title to the said land have been fully and fairly disclosed to this honourable Court.

Sworn (*&c.: see ante*, No. 13).

2188.
Notice or advertisement, of order *nisi*, directing a declaration of title to be made (*l*).

In Chancery.

(*Title, as in order.*)

Pursuant to the above mentioned Act of Parliament, notice is hereby given that, upon the further hearing: adjourned by an order dated the (12th Feb., 1870): of the petition of J. R., by

(*g*) 25 & 26 Vic. c. 67, Sched. r. 1; Dan. Pr. 1957.

(*h*) 25 & 26 Vic. c. 67, s. 2; Dan. Pr. 1957.

(*i*) 25 & 26 Vic. c. 67, s. 15; Dan. Pr. 1960, 1961.

(*k*) See 25 & 26 Vic. c. 67, s. 10; Dan. Pr. 1959. As to dispensing with the affidavit, see *ib.*

(*l*) See *Re Roberts, ante*, No. 2186, n. (*e*); and see 25 & 26 Vic. c. 67, s. 11; *ib.* Sched. rr. 4—7; Dan. Pr. 1959, 1960.

M. D. his guardian, preferred in this matter on the (10th Feb. 1870), unto the Lord High Chancellor of Great Britain, it was, by an order dated the (23rd June, 1870), made by the Vice-Chancellor Sir W. M. J., ordered that the petitioner should give security as therein mentioned; and it was thereby declared and ordered that, on and after the (2nd Nov. 1870), on such security being given, a declaration should be made that the petitioner is entitled to one undivided moiety of the messuage, *&c.*, situate at, *&c.* (*as in order*): unless, in the mean time, good cause be shown to the contrary. And take notice, that a copy of the said order, together with a description of the property in question, is deposited at the office of Mr. G. P. P., situate at, *&c.*; and that notice of such deposit has been affixed on the premises in question; and that, in pursuance of the said order, the before mentioned security has been given. Dated this —— day of ——, 187—.

G. P. P., of (*Address*),
Solicitor for the Petitioner.

2189.

Application to the Registrar of office of Land Registry, to register a declaration of title (*m*).

In the matter of the Act of the 25th and 26th Victoria, chapter 53; and of the application of A. B.

A. B., of (*residence and addition*): being the person entitled to register the declaration of title made under the 25th & 26th Victoria, c. 67, to the lands in the parish of ——, in the county of ——, referred to in such declaration: hereby requires the Registrar of the Office of Land Registry to enter the same land upon the register: as the title to the same has been declared by the Court of Chancery. Dated this —— day of ——, 187—.

(*Signature of A. B., or his solicitor.*)

(*m*) 25 & 26 Vic. c. 53, s. 31; 25 & 26 Vic. c. 67, s. 21; Land Registry Ord. Nos. 108—110 W. N. (1866), Pt. II. 231: 12 Jur. N. S. Pt. II. 237; and Dan. Pr. 1962.

SECTION XXVII.—THE CONFIRMATION OF SALES ACT (*n*).

2190.

Petition for authority to dispose of land: reserving the minerals; or of the minerals: apart from the land (*o*).

In Chancery.

(*Branch of Court* (*p*).)

In the matter of the trusts of the settlement made on the marriage of J. W. and H. his wife.

And in the matter of the Act 25th & 26th Victoria, chapter 108, intituled "An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others."

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of W. H., of, *&c.*, S. W. U., of, *&c.*, J. W., of, *&c.*, and H. his wife, and of (*eight infants*), by the said J. W. their father and next friend.

Showeth as follows:

[1—21. Statements showing that, under the settlement (dated 30th May, 1843,) mentioned in the title, certain hereditaments were vested in the petitioners W. H. and S. W. U., in trust for the other petitioners: with power to sell, and lease; and that such settlement contained no provision forbidding the disposition of the premises therein comprised with an exception or reservation of any minerals.]

22. The lands and hereditaments now subject to the trusts of the said indenture of the 30th May, 1843, are suitable for sale in lots for building, and contain mines, minerals, and coals: the reservation of which out of the grants of the said lands would not lessen the value of the said lands for building purposes, but would, by the separate sale of such mines, minerals and coals, be of great profit to the persons beneficially entitled under the said indenture.

Your petitioners therefore humbly pray, that the said W. H. and S. W. U., or the survivor of them, or other the trustees or trustee for the time being of the said indenture of the 30th May, 1843, may be at liberty to exercise all or any of the trusts, powers and authorities of the said indenture: so as to dispose of the land and hereditaments now held under and subject to the trusts of the said inden-

(*n*) 25 & 26 Vic. c. 108; Dan. Pr. 1967.

(*o*) *Ibid.* For petition in like case, see *Re Willwey*: filed 4 Mar. 1863; and for the order thereon, see S. C. 21 Feb. 1863, Reg. Lib. B. 364: 32 L. J. Ch. 226: 1 N. R. 469, V. C. W. As to the service of the petition, see Dan. Pr. 1967; and for the general practice as to petitions, see *ib.* 1451, *et seq.*; and *ante*, No. 1742, *et seq.*, and notes thereto.

(*p*) See Ord. VI. 6; and *ante*, No. 197.

ture with an exception or reservation of the coals, mines and minerals in and under the same; and the rights and powers of, or incidental to the working, getting, or carrying away of such coals, mines and minerals; and so as to dispose of the coals, mines and minerals with such rights or powers separately from the residue of the land; and in either case without prejudice to any future exercise of the said trusts, powers and authorities with respect to the excepted coals, mines or minerals, or (as the case may be) the undisposed of land.

Or that your lordship (*Concluding as in* No. 57, *ante; and foot note*, No. 58).

Section XXVIII.—The Mortgage Debenture Acts, 1865, and 1870 (*q*).

2191. Summons, for the discharge of a satisfied registered security (*r*).

In Chancery.

In the matter of the —— Company.

And in the matter of the Mortgage Debenture Acts, 1865, and 1870.

Let (*&c.: Continue as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of A. B., of (*residence and addition*), that the above named —— company may be ordered to show cause why the entry in the Register of Securities of the said company of the (*Describe the security required to be discharged*), is not discharged from the charge of the mortgage debentures issued by the said company. Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

(*q*) 28 & 29 Vic. c. 78; 33 & 34 Vic. c. 20. As to these Acts, see Dan. Pr. 1968—1970; and Land Registry Rules, 14 Nov. 1865: W. N. (1866), Pt. II. 243: 12 Jur. N. S. Pt. II. 290.

(*r*) See 28 & 29 Vic. c. 78, s. 16; Dan. Pr. 1968. The application is made by an originating summons: for the practice as to which see *ib.* 1050, *et seq.*: nd see *ante*, No. 1123, *et seq.*, and notes thereto.

2192. Petition to appoint a receiver, at instance of owner of an overdue debenture (*t*).

In Chancery.

(*Branch of Court* (*s*).)

(*Title: as in* No. 2191, *ante.*)

Address to the L. C., or M. R.: see ante, No. 56.

The humble petition of A. B., of (*residence and addition*).

Showeth as follows:

1. *Recite the mortgage debenture; as thus:* By an instrument under the common seal of the above named —— company, dated the ——, 187—, numbered ——, and duly signed in accordance with the provisions of the Mortgage Debenture Act, 1865, the said company, by virtue of the said Act, and in consideration of the sum of £—— paid to them by your petitioner, thereby charged all the registered securities of the company with the payment to him, his executors, administrators and assigns, of the sum of £——, and interest thereon at the rate of £— per cent. per annum: such sum of £—— to be paid and payable to your petitioner, his executors, administrators, and assigns, at ——, on the —— day of ——, 18—: with interest on the same at the rate aforesaid, payable half yearly, at the said place, on every —— day of ——, and —— day of ——: And the said company thereby undertook to pay the said sum of £——, and interest at the rate aforesaid, as above mentioned.

2. *Show that default has been made in payment of the principal, or interest.*

3. *Show that a demand of payment has been made in writing, and not complied with.*

Your petitioner therefore humbly prays, that some proper person may be appointed on behalf of your petitioner, and all other persons entitled to the mortgage debentures of the said company, to receive all the principal monies, instalments, annuities, interest, and other monies from time to time payable to the said company upon, or in respect of their registered securities, and any cash or other monies in the bank to the credit of the Accountant-General of this honourable Court, on the account of the said company's mortgage debentures: until the principal and interest due on all the debentures issued by the said company: together with all costs: including the reasonable and proper charges of such receiver: shall have been fully paid; or until further order.

Or that your lordship (*Conclude as in* No. 57, *ante; and add foot note,* No. 58).

(*s*) See Ord. VI. 6; and *ante,* No. 197.

(*t*) See 23 & 29 Vic. c. 78, ss. 42—47; Dan. Pr. 1967, 1969. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and *ante,* No. 1742,

2193.
Summons to appoint a receiver, at instance of owner of an overdue debenture (*u*).

(*Title: as in* No. 2191, *ante.*)

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of A. B., of (*residence and addition*), a debenture holder of the above named company: that some proper person may be appointed on behalf of the applicant, and all other persons entitled (*Continue as in prayer of* No. 2192, *ante, to* further order).

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

Section XXIX.—The County Courts Acts, 1865, and 1867 (*x*).

2194.
Summons, for the transfer of a suit or proceeding from the Court of Chancery to a County Court (*y*).

Formal parts: see ante, No. 60.

on the part of the plaintiff [*or as may be*], that this suit [*Or*, proceeding]: which is now (marked and) attached to the Court of the Master of the Rolls [*Or*, Vice-Chancellor Sir ——]: may be transferred to the County Court of A., holden at B.

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et seq., and notes thereto. As to the powers, duties, and liabilities of receivers, see Dan. Pr. 1596, *et seq.*; and *ante*, Nos. 1853—1857, and notes thereto.

(*u*) See *ante*, No. 2192, n. (*t*). The application at Chambers should be made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*x*) 28 & 29 Vic. c. 99 (amended by 29 & 30 Vic. c. 14); and 30 & 31 Vic. c. 142; County Court Orders, 1867: Ord. in Eq. (W. N. (1868), Pt. II. 17, 30, *et seq.*); and 1870 (W. N. (1870), Pt. II, 346, *et seq.*); Pollock & Nicol, 268, *et seq.*; and see Dan. Pr. 1970—1978. For forms of plaints and petitions, decretal ordres, final decrees, and Registrar's certificates, see County Court Orders, 1867: Forms in Equity (W. N. (1868), Pt. II. 133, 166, *et seq.*); Pollock & Nicol, 269, *et seq.* As to the jurisdiction under the Trustee Acts, Trustee Relief Acts, and Legacy Duty Act, see 28 & 29 Vic. c. 99, ss. 1, 5; 30 & 31 Vic. c. 142, ss. 24—26; Dan. Pr. 1913, 1971—1973; and see *ante*, No. 2148.

(*y*) See 30 & 31 Vic. c. 142, s. 8: Pollock & Nicol, 304; Dan. Pr. 1972. For order in like case, see *Linford* v. *Gudgeon*, V. C. S. at Chambers, 18 Mar. 1870, Reg. Lib. B. 693: on application of defendant, and hearing plaintiff's solicitor. For the usual administration order, on summons, at instance of a next of kin, and directing that "pursuant to the eighth section of the County Courts Act, 1867, this matter and cause be transferred to the County Court of G., holden at S., and that the further consideration thereof be adjourned before hat Court," see *Re Williams, Morgan* v. *Nicholas*, M. R. at Chambers, 2 Feb. 1871, Reg. Lib. B. 259.

2195.
Summons, for the transfer of a suit, or matter, from a County Court to the Court of Chancery (*z*).

In Chancery.

(*Title of the suit or matter in the County Court; as thus:*)

In the matter of a plaint in the County Court of A., holden at B.

Between C. D., ... plaintiff.
E. F., ... defendant.

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of the above named C. D. [*Or*, E. F.], of (*residence and addition*), that the plaint in Equity filed in the County Court of A., holden at B., by the above named C. D. against the above named E. F. [*or as may be*], may be transferred to this Court. Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

2196.
Summons, for the re-transfer of a suit to the County Court (*a*).

Formal parts: see ante, No. 60.

on the part of the above named plaintiff [*or as may be*], that this suit: which was instituted in the County Court of S., holden at T., and which was transferred to this Court by an order dated the ——, 187—: may be re-transferred to the said County Court; and that the Clerk of the Records and Writs may be directed to return to the Registrar of the said County Court all the documents which have been transmitted to him in this suit.

2197.
Summons, that a suit, or matter, may be continued in the County Court (*b*).

Proceed as in No. 2195, *ante, to* may be; *and conclude thus:*

carried on and prosecuted in the said County Court: notwithstanding the subject matter thereof exceeds the limit in point of amount to which the jurisdiction of the said County Court extends.

Dated (*&c.: Conclude as in* No. 60, or 1123, *ante*).

(*z*) See 28 & 29 Vic. c. 99, s. 3; Dan. Pr. 1972. For order in like case, see *Re Leonard*, V. C. S. at Chambers, 22 Nov. 1866, Reg. Lib. A. 2434: on the undertaking of the applicant to abide by any order this Court might make as to the costs of the plaint. An application under s. 3 may be made to "any one of the Vice-Chancellors." The application is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq.*, and notes thereto.

(*a*) See 28 & 29 Vic. c. 99, ss. 8, 9; Dan. Pr. 1972, 1974. For order in like case, see *Hallam* v. *Hand*, V. C. K. at Chambers, 16 Nov. 1866, Reg. Lib. A. 2494 (by consent).

(*b*) See 28 & 29 Vic. c. 99, s. 9; Dan. Pr. 1974; and see County Court Orders, 1867: Ord. in Eq. XVIII.; and Sched. to Ord. Forms in Equity, No. 40 (W. N. (1868), Pt. II. 35, 175); Pollock & Nicol, 303, 645. By Ord. of Court, dated the 17 April, 1871 (Reg. Lib. B. 817), the Lord Chancellor has directed that any suit or matter transferred from any County Court to the Court of Chancery under sec. 9 shall proceed in the Court of V.-C. Malins.

2198.

Notice of appeal to the Vice-Chancellor (*c*).

(*Title: as in the proceedings in the County Court.*)

Take notice, that the above named plaintiff A. B. [*or as may be*] intends to appeal to his honour the Vice-Chancellor Sir Richard Malins from the decree [*Or*, order] dated the ——, 187—, made by the Judge of the said County Court in this suit [*Or*, matter]. Dated this —— day of ——, 187—.

A. B., the plaintiff above named.

[*Or*, E. F., counsel or (attorney) for the said plaintiff A. B.].

To the Registrar of the said County Court; and to the above named defendant C. D. [*or as may be*], and Mr. G. H., his attorney.

2199.

Case, on appeal to the Vice-Chancellor (*d*).

In Chancery.

T. S., ... plaintiff.
G. A., ... defendant.

CASE:

On appeal from the B. County Court of M., for the opinion of the Vice-Chancellor (Stuart).

1. The plaintiff, by his plaint in equity filed in the said County Court on the 18th January, 1866, after stating that, *&c.;* and further stating that, *&c.*, prayed, that it might be declared that, *&c.*

2. The defendant filed a statement in answer to the said plaint; and thereby admitted that, *&c.;* and the defendant stated that, *&c.;* and alleged that, *&c.;* and submitted to the Court whether, *&c.*

3. The said plaint came on to be heard before Sir J. E. W., the Judge of the said County Court, on the 27th of February, 1866: when the plaintiff and defendant severally appeared by counsel. The plaintiff's counsel opened his case, and called witnesses in support of it; and the defendant's counsel then opened his case,

(*c*) As to appeals from a County Court, and as to notice of appeal, see 28 & 29 Vic. c. 99, ss. 18, 19; County Court Orders, 1867: Ord. in Eq. XIX. 1—10 (W. N. (1868), Pt. II. 35, 36); Pollock & Nicol, 301, 302; Dan. Pr. 1976—1978. As to staying proceedings pending an appeal, see County Court Orders 1867: Ord. in Eq. XIX. 3 (W. N. (1868), Pt. II. 35); Pollock & Nicol, 301; Dan. Pr. 1976; and see Dan. Pr. 1335—1339; and *ante*, No. 1609, and note thereto. As to dismissing an appeal for want of prosecution, see County Court Orders, 1867: Ord. in Eq. XIX. 8 (W. N. (1868), Pt. II. 36); Pollock & Nicol, 302; Dan. Pr. 1977.

(*d*) *Slattery* v. *Axton*, W. N. (1866), 113: 14 W. R. 511, V. C. K.; and see *post*, No. 2202. For the practice as to preparing, settling, signing, and sealing a case, and filing it at the Record and Writ Clerks' Office, and notifying the same, see 13 & 14 Vic. c. 61, s. 15; County Court Orders, 1867: Ord. in Eq. XIX. 4—7 (W. N. (1868), Pt. II. 35, 36); Pollock & Nicol, 301, 302; Dan. Pr. 1976, 1977.

and intimated his intention to call witnesses on the part of the defendant; but after addressing the Court for some time, and before he had concluded, and before calling his witnesses, he was stopped by the Judge: who dismissed the plaint with costs.

4. A copy of the notes of the learned Judge, taken upon the hearing of the said plaint, is appended to this case.

The questions for the opinion of the Vice-Chancellor are:

1. Whether the plaintiff is or not entitled to have the said agreement dated, *&c.*, so far as it relates to the purchase by the plaintiff of the said plot of land, situate at, *&c.*, performed: as prayed by the said plaint.

2. Whether it was competent for the Judge of the said County Court to dismiss the said plaint, without hearing the plaintiff's counsel in reply.

And the Vice-Chancellor is to make such decree or order, and to give such directions in the premises, as to his honour shall seem meet.

2200.

Notice of case having been filed with the Record and Writ Clerk (*e*).

(*Title: as in case.*)

Take notice, that the case on appeal from the County Court of A., holden at B., for the opinion of his honour the Vice-Chancellor Sir Richard Malins, on the decree [*Or*, order] made by the Judge of the said County Court dated the ——, 187—, was this day [*Or*, was on the —— day of ——, 187—] transmitted to the office of the Clerks of Records and Writs of the High Court of Chancery, together with a copy of such case, under the seal of the said County Court. Dated this —— day of ——, 187—.

E. F., of (*Place of business*),
Attorney for the said A. B.

2201.

Certificate of Record and Writ Clerk, to set down case for hearing (*f*).

(*Title: as in case.*)

These are to certify that this case on appeal is in a fit state to be set down for hearing: as appears by my book. Dated this —— day of ——, 187—.

A. B.
C. R. & W.

(*e*) See County Court Orders, 1867: Ord. in. Eq XIX. 7 (W. N. (1868), Pt. II. 36); Pollock & Nicol, 302; Dan. Pr. 1977.

(*f*) The case is set down for hearing by the Registrars' Clerk, at the Order of Course seat, on production of this certificate; and thereupon a *subpœna* to hear judgment must be issued and served. As to the *subpœna* to hear judgment, see Dan. Pr. 831—834; and see *ante*, No. 854, *et seq.*, and notes thereto.

2202.
Order on appeal to the Vice-Chancellor (*g*).

Date and Title.

This case: being an appeal from an order, dated, *&c.*, dismissing the plaint of the plaintiff with costs, made by Sir J. E. W., the Judge of the B. County Court of M., and which case has been settled and signed by the Judge, and filed with the Clerk of the Records and Writs: coming on to be heard before this Court this day, in the presence of counsel, *&c.*, and upon hearing, *&c.*, and reading, *&c.*: This Court doth reverse the said order dated, *&c.*; and doth order that the same be discharged. And this Court doth declare that, *&c.*; and doth order and decree the same accordingly. And this Court doth order that the defendant G. A. do pay to the plaintiff T. S. his costs of this suit, excepting the costs of this appeal: to be taxed by the Registrar of the said County Court of B. And it is ordered that the sum of £10, deposited with the Registrar of the said County Court on giving notice to the defendant of this appeal, be repaid to Mr. W. E. R., the plaintiff's solicitor.

Liberty to apply to the Judge of the County Court.

SECTION XXX.—REDUCTION OF CAPITAL AND SHARES.—COMPANIES ACT, 1867 (*h*).

2203.
Petition for order confirming reduction of capital (*i*).

In Chancery.

(*Branch of Court* (*k*).)

In the matter of the W. F. Company, Limited and Reduced (*l*).

And in the matter of the Companies Act, 1867 (*m*).

(*g*) *Slattery* v. *Axton*, V. C. S. 15 Dec. 1866, Reg. Lib. A. 2688; *ante*, No 2199. As to depositing the decree or order on appeal with the Registrar of the County Court, and enforcing same, see County Court Orders, 1867: Ord. in Eq. Ord. XIX. 9 (W. N. (1868), Pt. II. 36); Pollock & Nicol, 302; Dan. Pr. 1978.

(*h*) 30 & 31 Vic. c. 131; Ord. 21 Mar. 1868 (Law. Rep. 3 Chap. xlix.); Dan. Pr. 1978—1988.

(*i*) See *Re Warrant Finance Company*: petition presented 29 April, 1870, and filed 17 Aug. 1870. For the final order made thereon, see *post*, No. 2219. And see 30 and 31 Vic. c. 131, s. 11; Dan. Pr. 1979. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*k*) See Ord. VI. 6; and *ante*, No. 197.

(*l*) As to the addition "and reduced," see 30 & 31 Vic. c. 131, s. 10; Dan. Pr. 1978.

(*m*) The petition, and all notices, affidavits, and other proceedings thereunder, must be intituled in the matter of the Companies Act, 1867, and of the company in question: Ord. 21 Mar. 1868, r. 2; Dan. Pr. 1980.

Address of the petition: see ante, No. 56.

The humble petition of the W. F. Company, Limited and Reduced.

Showeth as follows:

1. The W. F. Company, Limited and Reduced, is a joint stock company, formed and registered in England, under the provisions of the Companies Act, 1862.

2. The registered office of the company is situate at, *&c.*, in the city of London.

3. The company was formed by a memorandum of association dated the 11th day of March, 1864: which was as follows (*Memorandum set out*).

4. By a special resolution passed on the 4th day of May, 1864, it was resolved that the name of the company should be changed to the W. F. Company, Limited.

5. As appears by the said memorandum of association, the nominal capital of the company is 2,000,000*l.*, divided into 40,000 shares of 50*l.* each.

6. The company is governed by articles of association duly registered with the said memorandum of association: as the said articles of association have from time to time been altered by special resolution duly registered under the Companies Act, 1862.

7. The first clause of the said articles of association, as the same has been altered by a special resolution, contains words as follows: "The business of the company may be commenced when three-fourths of one-half of the capital of the company shall have been subscribed for, and the deposit of 5*l.* per share paid thereon."

8. Three-fourths of one-half of the capital of the company were subscribed for; and the deposit of 5*l.* per share was paid on the shares so subscribed for. The business of the company was duly commenced, and calls have been made: so that, inclusive of the said 5*l.* per share deposit, the sum of 12*l.* per share has been called up. The 26th clause of the said articles of association, as the same was, on or before the 12th day of April, 1870, altered by special resolution, contains words as follows: "The company may, by special resolution, so far modify the conditions contained in its memorandum of association as to reduce its capital to such an amount, and in such shares, as shall by the special resolution be specified."

9. At an extraordinary general meeting of the members of the company, duly convened, and held at the registered office of the company, situate at, *&c.*, in the city of London, on Tuesday, the 12th day of April, 1870, the following resolution was duly passed and at a subsequent extraordinary general meeting of the members of the company, also duly convened and held at the same place on Thursday, the 28th day of April, 1870, the following special resolution was duly confirmed—that is to say: "That the memorandum of association shall be altered, by erasing therefrom the

following: 'The nominal capital of the company to be 2,000,000*l.* divided into 40,000 shares of 50*l.* each'; and inserting therein the following: 'The nominal capital of the company to be 240,000*l.*, divided into 20,000 shares of 12*l.* each" (*n*).

Your petitioners therefore humbly pray, that an order may be made confirming the reduction of the capital of the company; and that for that purpose all proper directions may be given.

Or that your lordship (*Concluding as in* No. 57, *ante*).

Note: It is not intended to serve this petition upon any person.

2204.

Summons, for directions as to settling list of creditors (*o*).

Formal parts: see ante, No. 60 (*p*).

on the part of the above named company, for directions as to the proceedings to be taken for settling the list of their creditors entitled to object to the proposed reduction of the capital of the company, as in their petition presented in this matter on the —— day of ——, 187—, mentioned.

2205.

Order thereon (*q*).

Master of the Rolls [*Or* Vice-Chancellor Sir ——], at Chambers. } (*Date.*)

In the matter of the —— Company, Limited and Reduced.

And in the matter of the Companies Act, 1867.

Upon the application of the petitioners by summons, dated the ——, 187—, and upon hearing the solicitor for the petitioners, and on reading the petition on the —— day of ——, 187—, preferred unto the Right Honourable the Lord High Chancellor of Great Britain [*Or*, Master of the Rolls]: It is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said company on the —— day of ——, 187—; and that notice (*r*) of the presentation of the said petition be inserted in the (*Describe the newspapers, and the days on which the*

(*n*) See 30 & 31 Vic. c. 131, s. 9; Dan. Pr. 1978.

(*o*) See Ord. 21 Mar. 1868, r. 8; Dan. Pr. 1981. This application is made *ex parte*, by an ordinary summons, after the petition (No. 2203) has been presented: *ib.* For the general practice as to such summonses, see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1122, *et seq.*, and notes thereto.

(*p*) As to the title, see *ante*, No. 2203, n. (*m*).

(*q*) Ord. 21 Mar. 1868, r. 4, and Sched. No. 1; Dan. Pr. 1981. For order in like case, see *Re Warrant Finance Company*, M. R. at Chambers, 3 May, 1870, Reg. Lib. B. 1219.

(*r*) See *post*, No. 2206.

insertions are to be made (*s*)); and that a list (*t*) of the persons who are creditors of the company on the said —— day of ——, and an office copy of the affidavit (*u*) verifying the same, be left at the chambers of the Judge on or before the —— day of —— (*x*).

2206.
Notice of presentation of the petition (*y*).

In the matter of (*&c.: as in the petition* (*z*)).

Notice is hereby given, that a petition for confirming a resolution reducing the capital of the above company from £—— to £——, was on the —— day of ——, 187—, presented to the Lord Chancellor [*Or*, the Master of the Rolls], and is now pending; and that the list of creditors of the company is to be made out as for the —— day of ——, 187—.

C. and D., of (*Place of business*),
[Agents for A. and B., of, *&c.*],
Solicitors to the company.

2207.
Affidavit, verifying list of creditors (*a*).

In Chancery.

In the matter of (*&c.: as in the petition* (*z*)).

I, A. B., of, *&c.* (*b*), make oath and say, as follows:—

1. The paper writing now produced and shown to me, and

(*s*) The first insertion is not to be less than one calendar month before the day of the date fixed with reference to which the list of creditors is to be made out: Ord. 21 Mar. 1868, r. 5; Dan. Pr. 1981. In *Re Warrant Finance Company* (a London company), *sup.*, the notice of the presentation of the petition was directed to be advertised once in the London Gazette, and twice (with a week's interval) in the Times, and another London paper, and the office copy of the affidavit was directed to be left at the expiration of a week after the date fixed as to the list of creditors. In *Re Credit Foncier of England*, Law Rep. 11 Eq. 357, V. C. B., one insertion in the London Gazette, and three in each of three London papers, were directed; and see *post*, No. 2219, n. (*d*).

(*t*) See *post*, 2208.

(*u*) *Ibid.*, 2207.

(*x*) The Judge is to fix the date with reference to which the list of creditors is to be made out; and give directions as to the advertisements, and the verification of the list; and fix the time within which the affidavit is to be filed, and the list and office copy left: see Ord. 21 Mar. 1868, rr. 4—6; Dan. Pr. 1981.

(*y*) See Ord. 21 Mar. 1868, r. 5, and Sched. No. 2; Dan. Pr. 1981; and see *ante*, No. 2205.

(*z*) See *ante*, No. 2203, n. (*m*).

(*a*) See Ord. 21 Mar. 1868, rr. 6, 7, and Sched. No. 3; Dan. Pr. 1981; and see *ante*, No. 2205.

(*b*) The affidavit is to be made by some officer or officers of the company competent to make the same: Ord. 21 Mar. 1868, r. 6; Dan. Pr. 1981.

marked with the letter A. (*c*), contains a list of the creditors of, and persons having claims upon, the said company on the —— day of ——, 187— (the date fixed by the order in this matter, dated the ——, 187— (*d*)): together with their respective addresses, and the nature and amount of their respective debts or claims; and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid (*e*), any debt or claim which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company, other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the (*State what office deponent holds in the company* (*f*)) of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company (*g*).

Sworn (*&c.: see ante*, No. 12).

2208.

List of creditors: being exhibit A. to No. 2207 (*h*).

A.

In the matter of (*&c.: as in the petition* (*i*)).

This list of creditors, marked A., was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this —— day of ——, 187— :

X. Y., *&c.*

Names, addresses, and description of the creditors.	Nature of debt or claim.	Amount of debt or claim.

(*c*) See *post*, No. 2208.

(*d*) See *ante*, No. 2205.

(*e*) That is, the date fixed by the order with reference to which the list of creditors is to be made out.

(*f*) See n. (*b*), *sup.*

(*g*) See Ord. 21 Mar. 1868, r. 7; Dan. Pr. 1981.

(*h*) See *ante*, No. 2207, and notes thereto. As to inspecting and taking extracts from the list, see Ord. 21 Mar. 1868, r. 8 : as amended by Ord. 2 Mar. 1869; Dan. Pr. 1982.

(*i*) See *ante*, No. 2203, n. (*m*).

2209.

Notice, by post, to creditors entered in list (*k*).

In the matter of (*&c.: as in the petition* (*l*)).

To (*Name of creditor*).

You are requested to take notice, that a petition has been presented to the Court of Chancery to confirm a special resolution of the above company, for reducing its capital to £—— (*m*); and that in the list of persons admitted by the company to have been, on the —— day of ——, 187—, creditors of the company, your name is entered as a creditor (*Here state the amount of the debt or nature of the claim*).

If you claim to have been on the last mentioned day a creditor to a larger amount than is stated above, you must, on or before the —— day of ——, 187—, send in the particulars of your claim, and the name and address of your solicitor (if any) to the undersigned, at (*State where*). In default of your so doing, the above entry in the list of creditors will, in all the proceedings under the above application to reduce the capital of the company, be treated as correct.

Dated this —— day of ——, 187—.

A. B.,
Solicitor for the said company.

2210.

Notice, by advertisement, of the list of creditors (*n*).

In the matter of (*&c.: as in the petition* (*l*)).

Notice is hereby given, that a petition has been presented to the Court of Chancery for confirming a resolution of the above company, for reducing its capital from £—— to £——. A list of the persons admitted to have been creditors of the company on the —— day of ——, 187—, may be inspected at the offices of the company at (*State where*), or at the office of (*State where else*), at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day, and still to be, a creditor of the company, and who is not entered on the said list, and claims to be so entered, must on or before the —— day of ——, 187—, send in his name and address, and

(*k*) See Ord. 21 Mar. 1868, r. 9, and Sched. No. 4; Dan. Pr. 1982. The notice is to be sent through the post, in a pre-paid letter: addressed to the creditor at his last known address or place of abode: within seven days after the filing of the affidavit (see *ante*, No. 2207), or such further time as the Judge may allow: *ib.*

(*l*) See *ante*, No. 2203, n. (*m*).

(*m*) *Quære*, "from £—— to £——": compare Ord. 21 Mar. 1868, r. 9, with *ib.* r. 10, and Sched. Nos. 2, 5: *ante*, No. 2206, and *post*, No. 2210.

(*n*) See 30 & 31 Vic. c. 131, s. 13; Ord. 21 Mar. 1868, r. 10, and Sched. No. 5; Dan. Pr. 1979, 1982. The notice is to be published at such times, and in such newspapers, as the Judge directs, after the affidavit verifying the list has been filed: Ord. 21 Mar. 1868, r. 10.

the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned, at (*State where*) : or, in default thereof, he will be precluded from objecting to the proposed reduction of capital (*o*).

Dated this —— day of ——, 187—.

A. B.,
Solicitor for the said company.

2211.

Affidavit of result of notices, and verifying list of creditors(*p*).

In Chancery.

In the matter of (*&c. : as in the petition* (*q*)).

We, C. D., of, *&c.* (the Secretary of the said company (*r*)), E. F., of, *&c.* (the Solicitor of the said company), and A. B., of, *&c.* (the Managing Director of the said company (*r*)), severally make oath and say, as follows :

I, the said C. D., for myself, say as follows :

1. I did, on the —— day of ——, 187—, in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B. (*s*), upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors (*t*) marked A., referred to in the affidavit of ——, filed on the —— day of ——, 187— (*u*).

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office Receiving House, No. ——, in —— Street, in the county of ——, between the hours of ——, and —— of the clock in the ——noon of the said —— day of ——, 187— (*x*).

And I, the said E. F., for myself say as follows :

3. *If notice issued under rule* 10 (*y*), *say :* A true copy of the

(*o*) As to saving of rights of creditors who are ignorant of the proceedings, see 30 & 31 Vic. c. 131, s. 17 ; Dan. Pr. 1987.

(*p*) See Ord. 21 Mar. 1868, r. 11, and Sched. No. 6; Dan. Pr. 1983. The affidavit is to be filed : and an office copy thereof, and the lists exhibited thereto, are to be left at Chambers : within such time as the Judge shall direct : *ib.*

(*q*) See *ante*, No. 2203, n. (*m*).

(*r*) Or other competent officer or officers of the company : see Ord. 21 Mar 1868, r. 11 ; Dan. Pr. 1983.

(*s*) See *ante*, No. 2209. Exhibit the notice. For form of memorandum of exhibit, see *ante*, No. 43.

(*t*) See *ante*, No. 2208.

(*u*) *Ibid.*, 2207.

(*x*) *Ibid.*, 2209, n. (*k*).

(*y*) *Ibid.*, 2210, n. (*n*).

notice now produced and shown to me, and marked C. (*z*), has appeared in the —— of the —— day of ——, 187— (*&c.: Describe the newspapers in, and the dates on, which the notice mentioned in rule* 10 *has appeared*).

4. I have, in the paper writing now produced and shown to me, and marked D. (*a*), set forth a list of all claims, the particulars of which have been sent in to me, pursuant to the said notice B. now produced and shown to me (*b*), by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A., referred to in the said affidavit of ——, filed on the —— day of ——, 187— (*b*).

5. *If notice issued under rule* 10 (*c*), *add:* I have, in the paper writing now produced and shown to me, marked E. (*d*), set forth a list of all claims, the particulars of which have been sent in to me, pursuant to the notice referred to in the third paragraph of this affidavit, by persons claiming to be creditors of the said company on the —— day of ——, 187—, not appearing on the said list of creditors, marked A., and who claim to be entered thereon.

And we (the said) C. D. and A. B., for ourselves, say as follows:

6. We have in the first part of the said paper writing marked D. (now produced and shown to us), and also in the first part of the said paper writing marked E. (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

7. We have, in the second part of each of the said paper writings, marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said Exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct.

Sworn (*&c.: see ante*, No. 13).

(*z*) See *ante*, 2210. Exhibit the notice. For form of memorandum of exhibit, see *ante*, No. 43.

(*a*) See *post*, No. 2212.

(*b*) See *supra*.

(*c*) See *ante*, No. 2210.

(*d*) See *post*, No. 2213.

2212. List of debts and claims sent in pursuant to notice by post to creditors: being exhibit D. to No. 2211 (*e*).

D.

In the matter of (*&c.: as in the petition*).

List of debts and claims of which the particulars have been sent in to E. F. by persons claiming to be creditors of the said company for larger amounts than are stated in list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this —— day of ——, 187— :

X. Y., *&c.*

First Part.

Debts and claims wholly or partly admitted by the company.

Names, addresses, and descriptions of creditors (*f*).	Particulars of debt or claim.	Amount claimed.	Amount admitted by the company to be owing to creditor.	Debts proposed to be set apart and apropriated in full although disputed.

Second Part.

Debts and claims wholly disputed by the company.

Names, addresses, and descriptions of claimants (*f*).	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full, although disputed.

(*e*) See *ante*, No. 2211, and notes thereto.

(*f*) The names are to be inserted alphabetically.

E.

2213.

In the matter of (*&c.: as in the petition*).

List of debts and claims of which the particulars have been sent in to Mr. E. F., by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

List of debts and claims sent in pursuant to notice by advertisement: being exhibit E. to No. 2211 (*g*).

This paper writing marked E., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit, sworn before me, this —— day of ——, 187—:

X. Y., *&c.*

First Part.

(Same headings as in Exhibit D: *ante*, No. 2212.)

Second Part.

(Same headings as in Exhibit D: *ante*, No. 2212.)

2214.

In the matter of (*&c.: as in the petition* (*i*)).

To (*Name of creditor*).

Notice to creditor to prove debt or claim (*h*).

You are hereby required to come in and prove the debt claimed by you against the above company (*k*), by filing your affidavit and giving notice thereof to Mr. A. B. (*l*), the solicitor of the company, on or before the —— day of —— next; and you are to attend by your solicitor at the Chambers of the Master of the Rolls, in the Rolls' Yard, Chancery Lane,

Or, of the Vice-Chancellor Sir ——, at No. ——, Lincoln's Inn,

in the county of Middlesex, on the —— day of ——, 187—(*m*), at —— o'clock in the ——noon: being the time appointed for hearing and adjudicating upon the claim: and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will be precluded from objecting to the proposed reduction of the capital of the company. [*Or*,

(*g*) See *ante*, No. 2211, and notes thereto.

(*h*) See Ord. 21 Mar. 1868, r. 12, and Sched. No. 7; Dan. Pr. 1983. The notice is to be given, if the Judge so directs: *ib.* r. 12; and is to be sent in manner mentioned in r. 9: *ib.*; and see *ante*, No. 2209, n. (*k*). As to the costs of proof, or failure in proof, see Ord. 21 Mar. 1868, r. 13; Dan. Pr. 1984.

(*i*) See *ante*, No. 2203, n. (*m*).

(*k*) Where part of the debt or claim is admitted by the company, the notice should be qualified accordingly: see r. 12, *supra*.

(*l*) As the notice is to be given to the company's solicitor, it should appear by the notice where he is to be found.

(*m*) Not less than four clear days after the notice: see Ord. 21 Mar. 1868, r. 11; Dan. Pr. 1983.

[*Or*, you will, in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors.]

Dated this —— day of ——, 187—.

A. B., of (*Place of business* (*n*)),
Solicitor for the said company.

2215.

Chief Clerk's certificate of result of the settlement of the list of creditors (*o*).

(*Title: as in the petition.*)

In pursuance of the direction given to me by the Master of the Rolls [*Or*, Vice-Chancellor ——] I hereby certify that the result of the proceeding which has been taken in pursuance of the order made in this matter dated the —— day of ——, 187— (*p*), and the General Order of this Court in that behalf, is as follows:

The petitioners, the said company, have attended by their solicitor.

A list of the persons who were creditors of the said company on the —— day of ——, 187— (*q*), has been settled and is set forth in the first schedule hereto.

The said company have since paid off and discharged such of the said debts or claims as are set forth in the (first) part of the said schedule.

The said company are willing to set apart and appropriate the full amount of the debts or claims set forth in the (second) part of the said schedule. Such debts or claims amount together to £——.

The amounts of the debts or claims set forth in the (second) part of the said schedule have been fixed by inquiry and adjudication in manner provided by the 14th section of the Companies Act, 1867 (*r*), and make together the sum of £——.

The said company do not admit, and are not willing to set apart and appropriate, the debts or claims set forth in the (third) part of the said schedule, or any of them, or any part thereof respectively; and the amounts thereof respectively have not been fixed by inquiry and adjudication as aforesaid.

Such of the creditors of the said company as have consented in writing to the proposed reduction of the capital thereof are named in the—— part of the said schedule; and the sum of £—— is the total amount of the debts due from the said company to the creditors so consenting.

The sum of £—— is the total amount of the debts or claims

(*n*) See n. (*l*), *supra*.

(*o*) See Ord. 21 Mar. 1868, r. 14: as amended by Ord. 2. Mar. 1869; Dan. Pr. 1984. Form 2215 is intended merely as a general guide to what is ordinarily required to be certified. See further as to the Chief Clerk's certificate, Dan. Pr. 1215, *et seq.*; and *ante*, No. 1511, *et seq.*, and notes thereto.

(*p*) See *ante*, No. 2205.

(*q*) Date fixed by the order.

(*r*) See Dan. Pr. 1980.

of the said company, the payment of which has been secured in manner provided by the said 14th section of the Companies Act, 1867; and the names of the persons to whom the same are due, or by whom the same are claimed, are set forth in the —— column of the said schedule.

The debts or claims set forth in the second schedule hereto have been made against the said company, but have been wholly disallowed.

Pursuant to the said order of the —— day of ——, 187— (*s*), notice of the petition presented by the said company for confirming a resolution reducing their capital has been inserted in (*State what newspapers, and of what dates*); and a list of the persons who were creditors of the said company on the —— day of ——, 187—: together with an office copy of the affidavit of A. B., filed the —— day of ——, 187—, verifying the same (*t*): was left at the chambers of the said Judge on the —— day of ——, 187— (*s*).

Notice of the said list of creditors has been inserted in the (*State what newspapers, and of what dates*).

The evidence produced on this proceeding consists of (*State what*).

Dated (*&c.: Conclude as in* No. 1511, *ante*).

The first schedule above referred to (*Divide the schedule into parts, with appropriate headings: to correspond with the certificate.*)

The second schedule above referred to.

2216. Note of the Chief Clerk that his certificate has become binding (*u*).

(*Title.*)

The certificate made by me of the result of the settlement of the list of creditors in this matter, pursuant to the order therein dated the ——, 187—, has been filed and become binding.

Dated this —— day of ——, 187—.

C. D.,
Chief Clerk.

To the Secretary of the Lord Chancellor [*Or*, Master of the Rolls].

(*s*) See *ante*, No. 2205.

(*t*) *Ibid.*, Nos. 2207, 2208.

(*u*) See Ord. 21 Mar. 1868, rr. 3, 15; Dan. Pr. 1981, 1984. The petition (*ante*, No. 2203) will be placed in the Judge's list of petitions for hearing, upon a note to the above effect being produced at the office of the Secretary of the Lord Chancellor, or Master of the Rolls (as the case may be), after the expiration of eight clear days from the filing of the certificate: see *ib.*

2217.

Notice, by advertisement, of the day appointed for hearing the petition (*x*).

In the matter of (*&c.: as in the petition* (*y*)).

Notice is hereby given that a petition presented to the Lord Chancellor [*Or*, the Master of the Rolls] on the —— day of ——, 187—, for confirming a resolution reducing the capital of the above company from £—— to £——, is directed to be heard before the Vice-Chancellor —— [*Or*, the Master of the Rolls], on the —— day of ——, 187—.

A. & B., of (*Place of business*),
[Agents for C. & D., of, *&c.*]
Solicitors for the company.

2218.

Notice by creditor of intention to oppose application (*a*).

In the matter of (*&c.: as in the petition* (*y*)).

To Mr. A. B., the solicitor of the above named company.

You are requested to take notice, that it is my intention [*Or*, the intention of my client Mr. E. F., of (*residence and addition*),] to appear at the hearing of the petition presented by the said company for confirming a resolution reducing their capital, and to oppose the application made thereby.

Dated this —— day of ——, 187—.

E. F., of (*residence and addition*),
a creditor of the said company.
[*Or*, G. H., of (*Place of business*),
solicitor for the said E. F., a
creditor of the said company.]

2219.

Order confirming resolution for reduction of capital, on hearing the petition (*b*).

(*Date and Title.*)

Upon the petition preferred on, *&c.*, unto, *&c.*, and upon hearing counsel for the petitioners, and upon reading the petition (*and Order directing inquiries—Chief Clerk's Certificate of result—and the newspapers containing the notices directed to be advertised*): His lordship doth approve the minute set forth in the first

(*x*) See Ord. 21 Mar. 1868, r. 16, and Sched. No. 8; Dan. Pr. 1984. The notices are to be published at such times, and in such newspapers, as the Judge directs: r. 16, *sup.* The direction will be given at Chambers, on an *ex parte* application by the company's solicitor, after the Chief Clerk's certificate (*ante*, No. 2215) has become binding. In *Re Warrant Finance Company*, *ante*, No. 2203, the notices of the hearing of the petition were directed to be advertised in the same papers as the notices of the presentation: as to which, see *ante*, No. 2205, n. (*s*).

(*y*) See *ante*, No. 2203, n. (*m*).

(*a*) See Ord. 21 Mar. 1868, r. 17; Dan. Pr. 1984. Two clear days notice of the opposition must be given: *ib.* As to the costs of, and occasioned by the appearance, see Ord. 21 Mar. 1868, r. 18; Dan. Pr. 1985.

(*b*) *Re Warrant Finance Company*, M. R. 30 July, 1870, Reg. Lib. B. 2488

part of the schedule hereto (*c*); And doth order that the resolution set forth in the second part of the said schedule: being the special resolution passed at an extraordinary general meeting of the petitioners held on, *&c.*, and duly confirmed at another general meeting held on, *&c.:* be confirmed. And it is ordered that notice of the registration, by the Registrar of Joint Stock Companies of this order: including the said minute: be published in the London Gazette of the 26th of August, 1870; in the Times of the 26th & 27th of August, 1870, and in the Standard of the 26th & 27th of August, 1870 (*d*). And it is ordered that the petitioners be at liberty, on and after the 30th day of August, 1870 (*e*), to discontinue the addition to their name of the words "and reduced" (*f*).

The Schedule.

First Part: Minute approved by the Court.

The nominal capital of the company is 240,000*l.*, divided into 20,000 shares of 12*l.* each (*g*).

Second Part: Special resolution (*g*).

2220.

Notice, by advertisement, of the registration of order confirming reduction, and minute (*h*).

In the matter of (*&c.: as in the order confirming the resolution*).

Notice is hereby given, that by an order made by the Master of the Rolls [*Or*, Vice-Chancellor ——] on the —— day of ——, 187—, in the above mentioned matter, it was ordered that the special resolution passed at (*&c.: Repeating the terms of the order*), be confirmed. And it was ordered that the said company

For the petition in that case, see *ante*, No. 2203; and see 30 & 31 Vic. c. 131, ss. 9, 15; Dan. Pr. 1978, 1986. See also the order in *Re Crédit Foncier of England*, V. C. B. 21 Jan. 1871: Law Rep. 11 Eq. 356, 362. As to the jurisdiction of the Court at the hearing of the petition, see Ord. 21 Mar. 1868, r. 19; Dan. Pr. 1985.

(*c*) See 30 & 31 Vic. c. 131, ss. 15, 16; Dan. Pr. 1986.

(*d*) See 30 & 31 Vic. c. 131, s. 15; Ord. 21 Mar. 1868, r. 20; Dan. Pr. 1986. The practice is to direct the final advertisements to be inserted in the same newspapers as the preliminary notices were advertised in: see *Re Crédit Foncier of England*, Law Rep. 11 Eq. 360, V. C. B.: in which case the final advertisements were ordered to be inserted once in the London Gazette, and once in each of the same three London newspapers [see *ante*, No. 2205, n. (*s*)], in (each of) the two weeks next following the registration: S. C. Law. Rep. 11 Eq. 361, 362.

(*e*) As to the proper period, see Dan. Pr. 1986, 1987.

(*f*) See 30 & 31 Vic. c. 131, s. 10; Ord. 21 Mar. 1868, r. 20; Dan. Pr. 1978, 1986.

(*g*) See *ante*, No. 2203, par. 9.

(*h*) See 30 & 31 Vic. c. 131, s. 15; Ord. 21 Mar. 1868, r. 20; Dan. Pr. 1986; and *ante*, No. 2219.

be at liberty, after the expiration of —— from the date of the said order, to discontinue the addition to its name of the words "and reduced" [*or as may be: as in the order*].

And notice is hereby also given that the said order has been produced to the Registrar of Joint Stock Companies, and a copy thereof has been delivered to him: together with a minute, approved by the said Judge, in the words and figures following; namely: (*State what*); and such order and minute have been duly registered by the said Registrar of Joint Stock Companies.

Dated this —— day of——, 187—.

A. & B., of (*Place of business*),
Solicitors for the said company.

2221. SECTION XXXI.—THE LIQUIDATION ACT, 1868 (*i*).

2222. SECTION XXXII.—THE METROPOLITAN BOARD OF WORKS (LOANS) ACT, 1869 (*k*).

SECTION XXXIII.—THE FELONS' PROPERTY ACT (*l*).

2223. Summons, for an account by the administrator or interim curator of a convict's property (*m*).

In the matter of the property of A. B., a convict.
And in the matter of the Act 33rd and 34th Victoria, chapter 23, intituled "An Act to abolish forfeitures for treason and felony, and to otherwise amend the law relating thereto."

(*i*) 31 & 32 Vic. c. 68. As to the jurisdiction of the Court under this Act, see *ib.*; Ord. 29 April, 1869 (Law Rep. 4 Ch. xxxvii.); Dan. Pr. 1988.

(*k*) 32 & 33 Vic. c. 102; amended by the Metropolitan Board of Works (Loans) Act, 1870 (33 & 34 Vic. c. 24). As to the jurisdiction of the Court to appoint a receiver under sec. 40 of the Act of 1869, see Dan. Pr. 1989. No General Orders under this section have yet been issued: Dan. Pr. 1989, n. (*u*). The application under section 40 will, it is presumed, be made by petition. As to receivers, see Dan. Pr. 1563, *et seq.*; and *ante*, No. 1825, *et seq.*, and notes thereto. For the general practice as to petitions, see Dan. Pr. 1451, *et seq.*; and see *ante*, No. 1742, *et seq.*, and notes thereto.

(*l*) 33 & 34 Vic. c. 23. As to this Act, see Dan. Pr. 55—57, 1990—1991.

(*m*) See 33 & 34 Vic. c. 23, s. 28; Dan. Pr. 1990. As to proceedings by summons, see Dan. Pr. 1050, *et seq.*; and see *ante*, No. 1123, *et seq*, and notes thereto. As to taking accounts, see Dan. Pr. 1120, *et seq.*; and see *ante*, No. 1281, *et seq.*, and notes thereto.

Let (*&c.: Proceed as in* No. 1123, *ante, to* noon), on the hearing of an application on the part of Her Majesty's Attorney-General:

Or, of C. D., of (*residence and addition*), who claims to be the heir at law [*Or*, next of kin] of the above named A. B.—*or as may be* (*n*):

that, pursuant to section 28 of the above mentioned Act, E. F., the administrator [*Or*, interim curator] appointed under the said Act of the property of the above named A. B. (*o*) [*Or other person who, without legal authority, shall have possessed himself of any part of the property of the convict*], may be ordered to account for his receipts and payments in respect of the property of the said A. B.; and that all proper consequential directions may be given.

Dated (*&c.: Conclude as in* No. 1123, *ante: including the foot note*).

SECTION XXXIV.—THE MARRIED WOMEN'S PROPERTY ACT, 1870 (*p*).

2224. Notice of motion, or summons, for decision of a question as to ownership of property of a married woman (*q*).

In the matter of A. B., the wife of C. B.
And in the matter of The Married Women's Property Act, 1870.

Other formal parts: see ante., No. 55, *as to a notice of motion; and ante* No. 60, *or* 1123, *as to a summons* (*r*).

on the part of the above named C. B., of (*residence and addition*):

(*n*) As to the persons who may apply, see 33 & 34 Vic. c. 23, s. 28; Dan. Pr. 1990.

(*o*) As to the appointment and powers of an administrator and interim curator of a convict's property, see 33 & 34 Vic. c. 23, ss. 9—29; Dan. Pr. 57, 58; and for the meaning of the word "convict" in the Act, and when a convict ceases to be subject thereto, see 33 & 34 Vic. c. 23, ss. 6, 7; Dan. Pr. 55, nn. (*g*), (*h*). As to continuing proceedings against an administrator, or new interim curator, of a convict's property, see 33 & 34 Vic. c. 23, s. 26; Dan. Pr. 1394.

(*p*) 33 & 34 Vic. c. 93. See as to sec. 3, Dan. Pr. 1653; as to secs. 7, 8: *ib.* 1653, n. (*i*); and as to secs. 9, 10: *ib.* 1991, 1992.

(*q*) See 33 & 34 Vic. c. 93, s. 9; Dan. Pr. 1991. For summons by a married woman, for the transfer of a fund into her name, under sec. 3 of the Act, see *ante*, p. 1914; and see *ib.* n. (*l*). For the general practice on summons, see Dan. Pr. 1050, *et seq.*; and *ante*, No. 1123, *et seq.*, and notes thereto. For the general practice on motions, see Dan. Pr. 1437, *et seq.*; and see *ante*, No. 1734, *et seq.*, and notes thereto.

(*r*) Where the question arises in a pending suit or proceeding relating to the property, the application will be intituled in such suit or proceeding; and if

Or, of the above named A. B., the wife of C. B., of (*residence and addition of husband*), by E. F. of (*residence and addition*), her next friend :

that (*Describe the question to be determined ; as thus :* it may be declared that the property bequeathed to the said A. B. by the will of G. H., late of, *&c.*, and dated, *&c.*, does not belong [*Or*, belongs] to the said A. B., for her separate use, within the meaning of the above mentioned Act). And that all proper consequential directions may be given.

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made at Chambers, an ordinary summons will be sufficient: see *ante*, No. 60. In other cases, the application at Chambers will be made by an originating summons: see *ante*, No. 1123. If also the application by motion is not made in a cause, the notice must be marked in the manner explained, *ante*, No. 53, n. (*q*).

CHAPTER XLVI.

FORMS AND PRECEDENTS OF PLEADINGS.

Section I.—Precedents of Bills, and Forms of Prayer.

1. *Precedents of Bills* (*a*).

2225. Bill by a creditor, for administration of the real and personal estate of his debtor (*b*).

Title—and address of the bill: see ante, No. 154.

Humbly complaining, *&c.*, G. B. S., of, *&c.*, on behalf of himself and all other the creditors of S. C., late of, *&c.*, deceased, the above named plaintiff, as follows:

1. The said S. C. was, at the time of his death, indebted to the plaintiff in the sum of £4 19*s.*, for, *&c.*; and the said S. C. was also at the time of his death indebted to various other persons by specialty and on simple contract.

2. The said S. C. being so indebted, and being possessed of, or well entitled to, considerable real and personal estate, died on or about, *&c.*, intestate.

3. The said S. C. was never married; and he left the above named defendant A. M., the wife of the above named defendant G. M., his only sister and his sole next of kin and heiress-at-law, him surviving.

4. The real estates of or to which the said S. C. was seised or entitled at the time of his death were charged by way of mortgage with various sums of money, amounting to a very large sum in the whole.

5. On or about, *&c.*, letters of administration of the goods, chattels and effects of the said S. C. were granted to the defendant G. M. by her Majesty's Court of Probate.

6. The defendant G. M. has not paid the debt so due to the plaintiff as aforesaid, but the same still remains due and unpaid.

(*a*) For the model form of a bill, see *ante*, No. 154; and for collections of forms and precedents of bills and informations, see Drewry Eq. Pl. 109—143; Lewis Eq. Drafting, 259—332; Pemberton on Revivor, 157—189; 1 Van Hey. 1—637; Whitworth Eq. Prec. 1—478; Willis Eq. Pl. 1—418; and see *ante*, Nos. 155—194, 1690, 1702, 1707, 1713, 1718, 1722, 1723.

(*b*) *Smith* v. *Matthews*, M. R. (1859, S. No. 156); Dan. Pr. 279, n. (*z*). As to proceedings in administration suits, see Dan. Pr. 1082, *et seq.*; and *ante*, No. 1220, *et seq.*, and notes thereto.

Prayer.

The plaintiff prays as follows :

1. That an account may be taken of what is due to the plaintiff, and all other the creditors of the said S. C. ; and that the amount so due may be paid out of the real and personal estate of the said S. C., in a due course of administration, by and under the direction of this honourable Court ; and that, for that purpose, all necessary directions may be given, inquiries made, and accounts taken.

2. *General relief : see ante*, No. 154.

The defendant (*&c.: Conclude as in* No. 154, *ante*).

2226.

Bill by infant heir at law and next of kin, against the widow and administratrix, for general administration of the real and personal estate, and to make plaintiff a ward of Court (*c*).

Title—and address of bill : see ante, No. 154.

Humbly complaining, *&c.*, J. S., of, *&c.*, an infant by J. I., of, *&c.*, his next friend, the above named plaintiff, as follows :

1. The plaintiff's father, J. S., late of, *&c.*, yeoman, died on *&c.*, intestate : leaving the plaintiff (who was born on, *&c.*) his only child, his heir at law, and his sole next of kin ; and leaving the plaintiff's mother, the above named defendant M. S., his widow. Letters of administration of his personal estate and effects have been granted to the defendant by Her Majesty's Court of Probate. The said J. S. died seised of and entitled to real estate of great value : which has descended on the plaintiff ; and possessed of and entitled to personal estate : to which, or to a share of which, the plaintiff is entitled. The said J. S. died indebted to various persons, and his debts have not been paid. The defendant claims to be entitled to a distributive share of the personal estate, and to dower out of the real estate, of the intestate.

Prayer.

The plaintiff prays as follows :—

That the real and personal estate of the intestate J. S. may be administered, and proper provision made for the plaintiff's maintenance and education, by and under the direction of this honourable Court ; and that the plaintiff may have such further protection and relief as his case requires.

The defendant (*&c.: Conclude as in* No. 154, *ante*).

2227.

Bill by a married woman, for administration of real and personal estate of a testator (*d*).

Title—and address of bill : see ante, No. 154.

Humbly complaining, *&c.*, E. M. C., of, *&c.*, the wife of the defendant J. C., by H. J. A., of, *&c.*, her next friend, the above named plaintiff, as follows :

(*c*) *Stephen* v. *Stephen*, M. R. (1864, S. No. 125). As to guardianship and maintenance of infants, see Dan. Pr. 1189, *et seq.* ; and *ante*, No. 1464, *et seq.*

(*d*) As to suits by married women by next friend, see Dan. Pr. 102, 103 ; and *ante*, No. 138, *et seq.*, and notes thereto.

1. E. A., late of, *&c.*, esquire, deceased, was at the time of his death seised of, or entitled to, certain freehold and copyhold messuages, lands, and hereditaments; and was also possessed of personal estate to a considerable amount.

2. The said E. A. duly made and executed his last will and testament dated, *&c.*, and thereby [*&c.: Statement showing general devise and bequest of real and personal estate to A. B., and defendants W, F., and C. W., upon trust to convert, pay debts, legacies, funeral and testamentary expenses, and invest; and then in trust for the plaintiff for life, for her separate use, with remainder to her children; and in default of children, for the defendant Z. F.; and showing appointment of A. B., and defendants W. F., and C. W., executors*).

3. The said testator died on, *&c.*, without having revoked or altered his said will; and the same was duly proved by the said A. B., and the defendants W, F. and C. W., in Her Majesty's Court of Probate at the —— Registry, on the ——, 18—.

4. The plaintiff has never had a child.

5. The said A. B. died on, *&c.*: having duly accounted with the defendants W. F. and C. W. for all the receipts of the said A. B. up to the date of his death, in respect of the real and personal estate of the said testator; and there is nothing due from or to the estate of the said A. B. to or from the estate of the said testator (*e*).

6. The defendant J. C. is now residing at ——, out of the jurisdiction of this honourable Court (*f*).

7. Various claims have been made against the estate of the said testator, and difficulties have arisen in the administration thereof; and the defendants W. F. and C. W. allege that they cannot safely administer the said estate except under the direction of this honourable Court.

Prayer.

The plaintiff prays as follows:

1. That the trusts of the will of the said E. A. may be carried into execution, and his real and personal estate administered, under the direction of this honourable Court; and that for that purpose all proper directions may be given, inquiries made, and accounts taken.

2. *General relief: see ante*, No., 154.

The defendants (*&c.: Conclude as in* No. 154, *ante*).

2228. Bill by an equitable mortgagee, by deposit, for foreclosure or sale (*g*).

Title—and address of bill: see ante, No. 154.

Humbly complaining, *&c.*, D. J., of, *&c.*, the above named plaintiff, as follows:

1. On or about the 12th of May, 1851, the defendant M. R., then of, *&c.*, applied to the plaintiff for the loan of £150: which

(*e*) See Dan. Pr. 222.

(*f*) *Ibid.* 138, n. (*e*), 320, n. (*h*); and *ante*, No. 155.

(*g*) *James* v. *Rice*, reported Kay, 231: 18 Jur. 373; 5 De G. M. & G. 461:

the plaintiff agreed to advance, as to £100 forthwith, and as to the remaining £50 when the defendant should apply for the same; and it was agreed that the defendant should give his promissory note for the said sum and interest, as hereinafter mentioned; and should deposit the title deeds hereinafter mentioned, as a further security for such loan.

2. The plaintiff accordingly lent and advanced to the defendant the sum of £100 on the said 12th of May, 1851: and the defendant signed and delivered to the plaintiff his promissory note in the words and figures following: [*Promissory note set out*].

3. At the same time the defendant deposited with the plaintiff the title deeds relating to a messuage, with the buildings, garden, and appurtenances thereto belonging, situate in the parish of E., in the county of S., commonly called and known by the name of Little Yard: which had been conveyed to the defendant in fee simple, to the usual uses to bar dower; but no memorandum of such deposit was then, or has since been, given to the plaintiff.

4. On or about the 4th of June, 1851, the defendant applied to the plaintiff to advance him the further sum of £50, in accordance with the agreement hereinbefore stated; and accordingly the plaintiff advanced the defendant the said sum of £50 on the said 4th of June, 1851; and the defendant signed and delivered to the plaintiff a promissory note in the words and figures following: [*Promissory note set out*].

5. In or about the month of June, 1852, the defendant applied to the plaintiff to advance him the further sum of £60 for a week, under special circumstances, in order to save him the expense of a journey to London; and the defendant agreed to repay the plaintiff the said sum of £60 in a week's time, and also 10*s.* for the accommodation. The plaintiff accordingly advanced and paid the said sum of £60 to the defendant: who at the same time, gave him an unstamped memorandum in the words and figures following: [*Memorandum set out*].

6. The defendant made default in payment of the said sum of £60 and interest; and in the month of July or August, 1852, the plaintiff had an interview with the defendant, and then proposed that the defendant should execute to him a legal mortgage of the said freehold premises, of which the title deeds had been so deposited as aforesaid: together with certain leasehold property at C., which the defendant then stated he had recently agreed to purchase: to secure the said several loans and interest thereon, at the rate of £5 per cent. per annum: to which proposal the defendant agreed; but such mortgage was never completed.

7. The whole of the three several sums of £100, £50, and £60: amounting together to the sum of £210: together with interest thereon, still remains due from the defendant to the plaintiff.

18 Jur. 818. The bill was taken *pro confesso* against the defendant. For ordinary foreclosure bill, see *ante*, No. 154. As to proceedings in foreclosure suits, see Dan. Pr. 858—861, 1138, 1139; and *ante*, No. 1308, *et seq.*

8. The defendant subsequently became involved in pecuniary difficulties; and on or about the 18th of October, 1852, he left his home, and has not since been seen or heard of: although repeated and diligent inquiries have been made for him.

Prayer.

The plaintiff prays as follows:—

1. That an account may be taken of what is due to the plaintiff on security of the said deposit of deeds; and that the defendant may be decreed to pay to the plaintiff what shall, on taking the said account, be found due to him: together with the costs of this suit: by a short day to be appointed for that purpose; and, in default of such payment, that the defendant may be for ever barred and foreclosed of all right and equity of redemption in the said hereditaments at E. aforesaid; and that the said hereditaments and the legal estate therein may be conveyed to the plaintiff: or otherwise that the same may be sold; and that the produce of such sale may be applied to the satisfaction of what shall be found due to the plaintiff; and for the above purposes that all necessary directions may be given.

2. That some proper person may be appointed by the order of this honourable Court to receive the rents and profits of the said hereditaments.

3. *General relief: see ante*, No. 154.

The defendant (*&c.: Conclude as in* No. 154, *ante*).

2229. Bill for specific performance of agreement for purchase of an estate (*h*).

Title—and address of bill: see ante, No. 154.

Humbly complaining, *&c.*, A. B., of, *&c.*, the above named plaintiff, as follows:

1. In and previously to the month of June, 1851, the plaintiff was absolutely entitled to a certain estate called, *&c.*, situate at, *&c.*, in the county of ——.

2. On the —— day of June, 1851, the defendant agreed to purchase the said estate; and a memorandum of such agreement was reduced into writing, and duly signed by the defendant. Such memorandum was in the words and figures, or to the purport and effect following: [*Memorandum set out.*]

3. The plaintiff has frequently applied to the defendant, and requested him to perform the said agreement; but he has refused or neglected to do so.

(*h*) As to suits for specific performance, see Dan. Pr. 1111—1117; and *ante*, Nos. 1261—1267. As to damages in such suits, see Dan. Pr. 946; and for form of prayer, see *Soames* v. *Edge*, Johns. 671.

Prayer.

The plaintiff prays as follows :—

1. That the defendant may be decreed specifically to perform the said agreement of the —— day of June, 1851 : the plaintiff hereby offering specifically to perform the said agreement upon his part; and that for the purposes aforesaid all proper directions may be given, and inquiries made.

2. *General relief: see ante*, No. 154.

The defendant (*&c.: Conclude as in* No. 154, *ante*).

2230.

Bill by executors of mortgagee, for specific performance of agreement to take a transfer: or for foreclosure or sale (*i*).

Title—and address of bill: see ante, No. 154.

Humbly complaining, *&c.*, T. M., of, *&c.*, W. S., of, *&c.*, and J. C., of, *&c.*, the above named plaintiffs, as follows :—

1. On the 7th day of May, 1852, G. C., late of R., deceased, lent and advanced to the defendant E. V. the sum of £3000 on the security hereinafter stated.

2. For securing the said sum of £3000 and interest the defendant E. V. signed and delivered to the said G. C. the following agreement: [*Articles of agreement set out, verbatim: by which, after reciting the deposit of a lease, a policy of assurance, and gas shares, with G. C., E. V. declared that they were deposited as a security for £3000, and interest at 5 per cent.; and E. V. charged the leasehold property, the policy, and gas shares, and also a certain rent charge to which he was entitled in reversion, with the payment of the money and interest; and E. V. agreed, when required, to execute a mortgage and transfer of the said premises, shares, policy of assurance and rent charge: with power of sale, and such other clauses as G. C. should require*]. The defendant E. V. at the same time deposited with the said G. C. the several documents mentioned in the said agreement.

3. The said G. C. died in the month of April, 1853 : having first duly made and published his last will and testament in writing, and thereby appointed the plaintiffs executors : who, after his decease, proved the same in the Prerogative Court of the Archbishop of Canterbury.

4. The said sum of £3000 is still due and owing on the said security with interest thereon.

5. The defendant T. E., by letters signed by him, agreed with the plaintiffs, that if they would postpone giving notice of the said agreement to the tenants of the said property, and to the said gas and insurance offices, he would take a transfer of the said security. The plaintiffs accordingly, relying on such agreement, forbore to give such notice ; but the defendant T. E. now refuses to perform his said agreement. The defendant T. E. acted in the

(*i*) *Morris* v. *Vines*, V. C. W.: bill filed 20 July, 1854. For the answer of the defendant T. E. to this bill, see *post*, No. 2260.

said matter in concert with the defendant E. V., for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of portions of his property; and the defendant E. V. has accordingly realized portions of his property, and placed the same out of the hands of his creditors.

Prayer.

The plaintiffs pray as follows:—

1. That an account may be taken of the amount due and owing on the said security.
2. That the said agreement with the defendant T. E. may be specifically performed; and that the defendant T. E. may be decreed to pay to the plaintiffs the amount due on their said security, with the costs of this suit: the plaintiffs being willing, and hereby offering, on such payment, to transfer to him the said security; or otherwise that the amount so due: together with the costs of this suit: may be paid to the plaintiffs by the defendant E. V., by a short day to be appointed for that purpose; and that in default of such payment the defendant E. V., and all persons claiming under him, may be debarred and foreclosed of and from all right and equity of redemption in the said mortgaged premises; and may be decreed to convey and transfer the same to the plaintiffs; or otherwise that the said mortgaged premises may be sold, and the proceeds thereof applied in payment of the amount due on the said security, and the plaintiffs' costs of this suit.
3. That some proper person may be appointed, under the order and direction of this honourable Court, to collect, receive, and get in the rents and profits of the said leasehold premises, and the dividends of the said shares, and the said rent charge: when the same shall become payable.
4. *General relief: see ante*, No. 154.

The defendants (*&c.: Conclude as in* No. 154, *ante*).

2231. Bill to restrain infringement of patent, and for account, and damages (*k*).

Title—and address of bill: see ante, No. 154.

Humbly complaining, *&c.*, J. T., A. T., W. T., and H. T., all of, *&c.*, the above named plaintiffs, as follows:

1. Before and at the time of the making of the letters patent next hereinafter mentioned the plaintiffs had discovered and were the sole, true, and first inventors of the improvements in machinery for the manufacture of looped or knitted fabrics in such letters patent mentioned; and no other person before or at such

(*k*) See Dan. Pr. 1489, *et seq.*; and *ante*, No. 1767. As to assessments of damages, see Dan. Pr. 946, 947; and *ante*, Nos. 1052, *et seq.*, 1092, *et seq.*

time made, used, exercised, or vended the said improvements or invention.

2. On the 10th of October, 1855, her present Majesty by letters patent of that day, under the Great Seal of Great Britain, did for herself, her heirs and successors, give and grant unto the plaintiffs her special licence, that they, their executors, administrators, and assigns, or such others as the plaintiffs, their executors, administrators, and assigns should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years from the date of the said letters patent, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Improvements in Machinery for the Manufacture of Looped or Knitted Fabrics": upon the condition that the plaintiffs, their executors, or administrators, by an instrument in writing under their hands and seals, or under the hand and seal of one of them, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office, within six calendar months next and immediately after the date of the said letters patent: as by the said letters patent, when produced, will appear.

3. In pursuance of the said condition, the plaintiffs by an instrument in writing, under their hands and seals, dated the 7th of April, 1856, and enrolled in the Great Seal Patent Office on the 9th of the same month of April, 1856, particularly described the nature of their said invention, and in what manner the same was to be performed: as by the said instrument in writing, when produced, will appear.

4. *Concise statement, from the specification, of the nature of the invention.*

5. The said letters patent have never been impeached; and the same have, from the day of the date thereof, remained and now are in full force, and of valid and effectual authority; and the said improvement and invention was and is novel, useful, and valuable: and from the day of the date of the said letters patent the plaintiffs have applied the said invention with great success; and have manufactured large quantities of looped fabrics, by means of machinery constructed according to the said invention; and have derived great profit from the manufacture of such looped fabrics.

6. The plaintiffs have never permitted any machines to be constructed according to the said invention for any person, except for themselves; and they have never granted any licence to use the said invention to any person whomsoever.

7. In the month of ——, the plaintiffs discovered, for the first time, as the fact is that the defendant has caused to be constructed for himself, and erected at L., several machines constructed according to the plaintiffs' said invention, or upon the principle of, or only colourably differing from, the plaintiffs' said

invention, and that by means of such machines the defendant is manufacturing large quantities of looped fabrics.

8. The defendant has made and is now making such goods as last aforesaid, and is selling the same : to the great prejudice and damage of the plaintiffs ; and he has derived, and is now deriving, large gains and profits therefrom.

9. The defendant has sold the looped fabrics so manufactured by him, by means of such machines as aforesaid, at a great reduction on the price at which they had been sold previously by the plaintiffs ; and the plaintiffs have been thereby compelled to reduce their charges for manufacturing such looped fabrics : to the great loss and damage of the plaintiffs.

10. The plaintiffs have frequently applied to the defendant, and requested him to discontinue the use of their said invention, and the infringement of their said patent, and to come to an account with the plaintiffs for the profits made by the defendant by such use and infringement ; but the defendant has refused to comply with such requests.

Prayer.

The plaintiffs pray as follows :—

1. That an account may be taken of the profits made by the defendant from the sale of looped fabrics manufactured by him by means of machines constructed according to the plaintiffs' said invention, or constructed upon the principle of, or only colourably differing from, the said invention ; and that the defendant may be decreed to pay to the plaintiffs what, upon taking such accounts, shall be found due from him.

2. That the amount of the damages sustained by the plaintiffs, by reason of the defendant infringing their said letters patent, beyond the amount which, upon taking the account aforesaid, shall appear to be the profits made by the defendant as aforesaid, may be ascertained by and under the direction of this honourable Court ; and that the defendant may be decreed to pay such amount to the plaintiffs.

3. That the defendant, his servants, agents and workmen may be restrained, by the order and injunction of this honourable Court, from making, using, or selling machines for the manufacture of looped fabrics, constructed according to, or upon the principle of, or upon any principle only colourably differing from, the plaintiffs' said invention ; and from selling looped fabrics manufactured by means of any such machine : except such fabrics shall have been manufactured by the plaintiffs, or by some person duly licensed by them.

4. That the defendant may pay the costs of this suit.

5. *General relief : see ante,* No. 154.

The defendant (*&c. : Conclude as in* No. 154, *ante*).

2232.

Bill for appointment of a receiver of real and personal estate, at the instance of alleged heir at law and next of kin: pending litigation as to his title (*l*).

Title—and address of bill: see ante, 154.

Humbly complaining, *&c.*, S. W., of, *&c.*, the above named plaintiff, as follows:

1. M. E., late of, *&c.*, widow, was for many years prior and down to and at the time of her death, hereinafter mentioned, seised or otherwise well entitled in fee simple of or to real estate of large value: consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere.

2. The said M. E. was also, at the time of her death, possessed of or entitled to a large leasehold estate: consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere; and also of or to a large personal estate: consisting of moneys, securities for money, and other particulars of very large value.

3. The said M. E. died intestate on or about, *&c.*, a widow, and without issue.

4. At the time of the death of the said M. E., the plaintiff was, and he is, her heir at law, being the eldest son of S. W. the younger, late of, *&c.*, deceased, who was the only brother of the said M. E., and who died in her lifetime. The said S. W. the younger, and the said M. E., were the son and daughter of S. W. the elder, of, *&c.*, and M. his wife, who died many years ago.

5. The plaintiff was also at the time of the death of the said M. E., and he is now, one of her next of kin according to the statutes for the distribution of the estates and effects of intestates. The only other next of kin of the said M. E. were and are E., now the wife of J. G., A. W., and J. W.: the only other children of the said S. W. the younger, who were living at the time of the decease of the said M. E.

6. Shortly after the death of the said M. E., untrue information was given to the solicitor of Her Majesty's Treasury that the plaintiff and his said brother and sister were illegitimate, and that the said M. E. had died without leaving any lawful heir or next of kin; and thereupon, and on the —— day of ——, 186—, a caveat was entered in Her Majesty's Principal Court of Probate by Her Majesty's Proctor, on behalf of Her Majesty, against the grant of letters of administration of the effects of the said intestate to any except such person as should be nominated by or on behalf of Her Majesty.

7. The plaintiff, as such heir at law of the said M. E., has commenced divers actions of ejectment against the tenants in possession of divers parts of the said M. E.'s real estate, to recover possession thereof; and Her Majesty's Attorney-General has undertaken to defend such actions on behalf of the tenants in possession; but some considerable time must elapse before such

(*l*) *Williams* v. *Attorney-General*, M. R. (1861, W. No. 101), cited Dan. Pr. 221, n. (*h*), 1572, n. (*y*). For notice of motion for appointment of a receiver in same case, see *ante*, No. 1827.

actions can be tried, or the title of the plaintiff as such heir at law can be determined.

8. In the meantime the rents of the said M. E.'s real estate: which consists in great part of divers small houses and tenements, let to divers persons as weekly tenants: have run into arrear; and the tenants in possession refuse to pay any rent to the plaintiff; and very large sums are due in respect of the same rents: which are in danger of being lost, and in fact very large sums have already been lost in respect thereof.

9. The plaintiff has applied to Her Majesty's Court of Probate for the grant of letters of administration of the estate and effects of the said M. E. to him, as the lawful nephew, and one of the nearest of kin of the said M. E.; but by reason of the grant of such letters being opposed by Her Majesty's Attorney-General, under the circumstance aforesaid, the right to such letters of administration is now under litigation; and some time must necessarily elapse before the right of the plaintiff thereto can be determined.

10. Under the circumstances aforesaid there is no personal representative of the said M. E.

11. For the reasons aforesaid, the rents of the leasehold estate of the said M. E.: which consists of divers small houses let out to weekly tenants: are likewise in arrear, and in danger of being lost; and a large portion thereof has already been lost.

12. Moreover, the houses and buildings on the said estates are falling into bad repair, and they require considerable outlay to keep them in proper condition; and the covenants to repair and insure contained in several of the leases under which the said M. E.'s leasehold estate is held have been broken, and the said leases are liable to forfeiture; and, indeed, the landlords of some parts of the said leasehold estate have already entered upon the same for breaches of covenant: whereby the same have become lost to the said intestate's estate.

13. The moneys and other personal estate of the said M. E. are likewise in danger of being lost for want of some person to collect and get in the same.

14. The plaintiff submits that some proper person or persons ought to be appointed to receive the rents and profits of the said M. E.'s freehold and leasehold estates, and to collect and get in her personal estate, as hereinafter prayed.

15. At the time of the death of the said M. E., there were in her house divers deeds, books, and documents belonging to her, and relating to her real and personal estate, and such deeds, books, and documents were taken possession of on the part of Her Majesty; and the same are now under the control of Her Majesty's Attorney-General; and the plaintiff submits that the same ought to be produced and handed over to such person or persons as may be appointed to be such receiver or receivers as aforesaid, for the purpose of facilitating the receipt of the rents and profits of the said real and leasehold estate, and

the receipt and getting in of the said intestate's other personal estate.

Prayer.

The plaintiff prays as follows:

1. That some proper person may be appointed to receive the rents and profits of the real estate of the said M. E., and to let and manage the same: until such time as the plaintiff's title shall be determined in the said action at law.

2. That some proper person may also be appointed to receive the rents and profits of the leasehold estates of the said M. E., and to let and manage the same, and to receive, collect and get in her personal estate: pending the aforesaid litigation in Her Majesty's Court of Probate.

3. That all deeds, books, and documents now under the control of Her Majesty's Attorney-General, belonging or relating to the real and personal estate of the said M. E., may be delivered over to the person or persons so to be appointed, or that the same may be deposited in this Court: for the purpose of enabling such person or persons to refer to and use the same, as may be necessary.

4. That for the purposes aforesaid all usual and necessary directions may be given, and inquiries directed.

5. *General relief: see ante*, No. 154.

The defendant (*&c.: Conclude as in* No. 154, *ante*).

2233.

Bill for limitation of liability of shipowner, under the Merchant Shipping Acts (*m*).

Title—and address of bill: see ante, No. 154.

Humbly complaining, *&c.*, T. G. (*and five others*), all of S., in the county of D., and severally shipowners, the above named plaintiffs, as follows:

1. The plaintiffs are the owners of the British brig Edith Mary, of 248 tons burthen, as per register.

2. The said brig Edith Mary was, on Saturday, the 13th of February, 1864, on a voyage, bound northward, in ballast; and during a severe gale of wind on that day, when off Filey in Yorkshire, the said brig came into collision with a vessel called the Thomas Barker; and by such collision the said Thomas Barker was sunk, and totally lost, and all the crew but two were drowned.

3. The said Thomas Barker was the property of the defendant T. B.; and the vessel was laden with coal, the property of the defendants the C. G. C., L. There was not any passenger on board the said Thomas Barker.

4. The defendants E. D., E. T. S., J. B., M. B., A. C. E., M.

(*m*) *Glaholm* v. *Barker* (1864, G. No. 64), 34 Beav. 305: 11 Jur. N. S. 434; Law Rep. 1 Ch. 223: 12 Jur. N. S. 82, L.JJ.; S. C. Law Rep. 2 Eq. 598: 12 Jur. N. S. 764, M. R.; Dan. Pr. 1941; and see *ante*, No. 1769.

B., and M. P. are respectively the legal personal representatives of T. D., T. R. S., J. B., J. B., R. E., W. B., and R. P., who formed seven of the crew of the said Thomas Barker, and who were respectively drowned. J. D., another of the crew of the said Thomas Barker, was drowned, but he has not any legal personal representative. The defendants W. C. W. and J. M. D., the only other members of the crew, survived the said collision, and are now living. All the crew of the said Thomas Barker had on board the said vessel, at the time of the said collision, clothes, sea chests, bedding, and other chattels.

5. No passengers or cargo were on board the Edith Mary at the time of the collision aforesaid.

6. The defendant T. B. has threatened to take proceedings against the plaintiffs, as owners of the Edith Mary, to recover from them a very large sum for the loss incurred by him through the said collision. The defendants E. D., E. T. S., J. B., M. B., A. C. E., M. B., and M. P. have severally commenced actions in Her Majesty's Court of Q. B., at Westminster, against the plaintiffs, to recover from them very large sums of money by reason of the loss of the lives of the seamen aforesaid, and the loss of their clothes and property; and such proceedings are still pending. The defendants W. C. W. and J. M. D. also threaten proceedings against the plaintiffs for the loss of their clothes and baggage; and the defendants, the C. G. C., L., claim a large sum of money from the plaintiffs for the loss of the cargo of the Thomas Barker, by the collision aforesaid.

7. The total amount of the several claims exceed by a large amount the sum of £1984: which is the value of the Edith Mary, reckoned at £8 per registered ton.

8. The plaintiffs admit that they are answerable in damages in respect of the matters aforesaid, in manner mentioned in Part 9 of the Merchant Shipping Act Amendment Act, 1862, to the extent of £8 per registered ton of the Edith Mary: which the plaintiffs submit is, according to the said Act, the limit of their liability where there has been no loss of life of, or personal injury to, any passenger; and they are desirous of having such limit of liability declared and the amount thereof distributed under the direction of this honourable Court.

Prayer.

The plaintiffs pray as follows:—

1. That the amount of the plaintiffs' liability in respect of the matters aforesaid, according to the said Act, may be declared and distributed between the defendants, and all other persons who shall establish claims against the plaintiffs in respect of the matters aforesaid, by and under the direction of this honourable Court.

2. That in the meantime the defendants, and each of them, may be restrained, by the order and injunction of this honourable Court, from prosecuting the said actions so already commenced as aforesaid, and each of them,

and from commencing and prosecuting any other action or actions against the plaintiffs, or any of them, touching the matters aforesaid, or any of them.

3. *General relief: see ante*, No. 154.

The defendants (*&c.: Conclude as in* No. 154, *ante*).

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2. *Common Forms of Prayer* (*n*).

2234. Admission of assets, or account (*o*).

That the defendants A. B. and C. D. (*executors of deceased executor*) may admit assets of the said W. W. (*deceased executor*) sufficient to answer what (if anything) may be found due from his estate, upon taking any such accounts as aforesaid; or that the necessary accounts may be taken of the estate of the said W. W.

2235. Adoption of proceedings had in another suit (*p*).

That in making the inquiries, and taking the accounts, required for the purpose of this suit, any of the proceedings had in the said suit of A. *v.* B. which can properly or usefully be adopted, may be adopted accordingly; and that the costs of the said suit of A. *v.* B. remaining unpaid (if any) may be provided for in this suit.

2236. Boundaries to be ascertained (*q*).

That the boundaries of the said real estate of the said J. T. may be defined and set out under the decree of this honourable Court; and that all necessary directions may be given for that purpose.

2237. Declaration of rights.

That the rights and interests of all parties in the said real and personal estate may be ascertained and declared.

2238. Formal party (*r*).

That the defendant A. B., upon being served with a copy of the bill, may be bound by all the proceedings in the cause.

(*n*) As to the prayer, see Dan. Pr. 277, 311—320; 15 & 16 Vic. c. 86, s. 10. For other forms of prayer, see *post*, INDEX.

(*o*) See Dan. Pr. 208.

(*p*) For orders in like case, see Seton, 105, 111.

(*q*) As to suits to settle boundaries, see Dan. Pr. 1033—1035; and *ante*, No. 1121.

(*r*) As to binding parties by service of a copy of the bill, see Dan. Pr. 173, 318, 353—358; Ord. X. 11—18; XL. 16; Reg. Regul. 15 Mar. 1860, r. 24; and *ante*, Nos. 244—251.

2239.
Interpleader (*s*).

1. That the said several defendants may be decreed to interplead, touching their said claims to the said sum of £—— ; and that the plaintiff may be at liberty to pay the same into Court, for the benefit of such of the defendants as shall appear to be entitled thereto.

2. That the defendant C. D. may be restrained, by the order and injunction of this honourable Court, from prosecuting the said action so commenced by him as aforesaid ; and that the defendants may in like manner be restrained from commencing or prosecuting any other action or proceeding against the plaintiff, for the recovery of the said sum of £——, or any part thereof, or otherwise concerning the matters aforesaid.

2240.
Principal against agent: account (*t*).

1. That an account may be taken of all sums of money received by, or come to the hands of, the defendant, as such agent of the plaintiff as aforesaid, for or on account, or for the use of, the plaintiff, and of the application thereof ; and of all dealings and transactions of the defendant, as the plaintiff's agent ; and that the defendant may be decreed to pay to the plaintiff what, on taking such accounts, shall be found due from the defendant to the plaintiff ; and to deliver up to the plaintiff all documents in the defendant's possession or power, belonging to the plaintiff.

2. That the defendant may pay the costs of this suit.

2241.
Sale or partition (*u*).

1. That the said hereditaments situate at, *&c.*, may be sold.

2. That the proceeds of such sale : after payment thereout of the costs and expenses of sale, and the costs of this suit : may be distributed or secured for the benefit of the plaintiffs and defendants, and the several other persons entitled to, or interested in, the said premises, according to their respective shares and interests therein.

3. Or, if this honourable Court shall be unable or refuse to order such sale, that a decree for partition of the said hereditaments may be made, in lieu of such sale : with all proper consequential directions.

4. That, for the purposes of this suit, all necessary declarations may be made, and all inquiries may be directed and directions given, which may be necessary or proper.

(*s*) As to interpleader suits, see Dan. Pr. 1412—1418 ; and *ante*, Nos. 1707—1712.

(*t*) See Dan. Pr. 273, 576.

(*u*) As to proceedings on sales by the Court, see Dan. Pr. 1141—1187 ; and *ante*, Nos. 1366—1457 ; and as to proceedings in partition suits, see The Partition Act, 1868 (31 & 32 Vic. c. 140) ; Dan. Pr. 1019—1033 ; and *ante*, Nos. 1103—1120.

Section II.—Interrogatories (*x*).

2242.

Applications.

Has not the plaintiff, by himself or his solicitors, or otherwise, and how, frequently, or on some and what occasions, made such applications to the defendant as in the —— paragraph of the said bill in that behalf stated, or some other and what applications: or how otherwise?

2243.

Deed.

Was not such indenture as is in the —— paragraph of the said bill mentioned to bear date the —— day of ——, made between such parties, and was not the same of such date, and to such purport or effect, as in the same paragraph in that behalf mentioned, or between some other and what parties, of some other and what date, or to some other and what purport or effect: or how otherwise.

2244.

Letter.

Did not the plaintiff, on the —— of ——, or at some other and what time, write and send to the defendant a letter of that, or of some other and what date: or how otherwise? Was not such letter in the words and figures, or to the purport or effect, in the —— paragraph of the said bill in that behalf stated, or in some other and what words and figures, or to some other and what purport or effect: or how otherwise?

2245.

Particulars of personal estate.

Set forth a full, true, and particular account of the personal estate of the said testator, and the particulars whereof the same, and every part thereof, consisted; and the full and utmost value of such particulars respectively; and when, and by and to whom, and on what account, and by whose order, and for whose use, such personal estate and every part thereof, and the proceeds thereof, has or have been received, sold, disposed of, applied, allowed, or administered; and what balance arising therefrom is now in the hands of the defendants, or due from them respectively; and what part of such personal estate is unsold or undisposed of, and where, and in whose possession?

2246.

Particulars of real estate.

Set forth a full, true and particular account and rental of all the freehold, copyhold, and leasehold estates of or to which the said testator was seised, possessed, or entitled at the time of his decease; and in whose possession or occupation, and at what rent

(*x*) As to interrogatories, see Dan. Pr. 404—410; 15 & 15 Vic. c. 86, ss. 10, 12; Ord. X. 7; XI. For the model form of interrogatories, see *ante*, No. 359; and for other forms, see 2 Van Hey. 491—493; Whitworth. Eq. Pl. 632, 633; Lewis, Eq. Drafting, 332—337.

or rents, the same have respectively been since the death of the said testator; and a like account of all sums of money received by the defendant on account of, or in respect of, the rents and profits of the said freehold, copyhold, and leasehold estates since the death of the said testator; and when and from whom received, and in respect of what estate or estates; and a like account of the several freehold, copyhold, and leasehold estates of the said testator which have at any time been sold by the defendant; and when, and in what manner, and to whom, and for what sum or sums of money the same have been respectively sold; and when, and from whom, any such moneys arising from the sale of the said estates have been received by the defendant; and a like account of the application of the moneys so received by him; and what balance in respect thereof is now in his hands.

2247.
Will.

Did not the said testator duly make and execute his last will and testament in writing as in the —— paragraph of the said bill in that behalf mentioned? Was not such will of the date, [in the words and figures,] or to the purport or effect in the same paragraph stated, so far as the same is therein set forth, or of some other and what date, [in some other and what words and figures,] or to some other and what purport or effect: or how otherwise?

Section III.—Demurrers (*y*).

2248.
Formal parts.

See *ante*, No. 493.

2249.
Demurrer for want of equity (*z*).

That the plaintiff has not by his said bill made such a case as entitles him in a Court of Equity to any discovery from this defendant [*Or*, these defendants, or either (any) of them], or to any relief against him [*Or*, them, or either (any) of them], as to the matters contained in the said bill, or any of such matters.

(*y*) As to demurrers, see Dan. Pr. 465—519. For the general form of a demurrer, see *ante*, No. 493; and for other forms, see *ante*, Nos. 640—642; 2 Van Hey. 74—93; Willis, Eq. Pl. 422—484; Drewry, Eq. Pl. 144, 145; Lewis, Eq. Drafting, 338, 340. For joinder of demurrer with other defences, see *ante*, Nos. 640—642.

(*z*) *Cochrane* v. *Willis*, M. R. 28 Nov. 1863 (1863, C. No. 230). As to demurrers for want of equity, see Dan. Pr. 470, 471. For other forms of such demurrers, see 2 Van Hey. 74, 75, 80, 92; Willis, Eq. Pl. 461; Drewry, Eq. Pl. 144; Lewis, Eq. Drafting, 338.

2250.
Demurrer for want of equity (*a*).

That the said bill doth not contain any matter of equity whereon this Court can ground any decree, or give to the plaintiff any relief against this defendant [*Or*, these defendants, or either (any) of them].

2251.
Demurrer for want of parties (*b*).

That it appears by the said bill that it is necessary that the estate of the plaintiff's late wife M. N., in the said bill named, should be represented in this suit; but no legal personal representative of the said M. N. is named a party thereto.

2252.
Demurrer for multifariousness (*c*).

That it appears by the said bill that the same is exhibited against this defendant [*Or*, these defendants] and A. B., C. D., *&c.*, for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not [*Or*, these defendants are not, nor is either of them,] in any manner interested or concerned; and that the said bill is multifarious.

2253.
Demurrer, on the ground of the statute of frauds (*d*).

That it appears by the said bill that neither the promise or contract which is alleged by the said bill, and of which the plaintiff by the said bill seeks to have the benefit, nor any memorandum or note thereof, was ever reduced into writing or signed by this defendant [*Or*, these defendants or either (any) of them], or any person lawfully authorised thereunto, within the meaning of the statute passed in the 29th year of King Charles the Second, for the prevention of frauds and perjuries.

2254.
Demurrer to discovery (*e*).

That the plaintiff has not, in and by his said bill, stated or shown that this defendant has [*Or*, these defendants, or either (any) of them have or has] or pretends to have, any right, title or interest in the matters and things complained of by the said

(*a*) *Barkworth* v. *Young*, 4 Drew. 1; Drewry, Eq. Pl. 145; and see *ante*, No. 2249, n. (*z*).

(*b*) As to demurrers for want of parties, see Dan. Pr. 478; and for other forms of such demurrers, see 2 Van Hey. 81; Willis, Eq. Pl. 462; Drewry, Eq. Pl. 144.

(*c*) See 2 Van Hey. 79. As to multifariousness, see Dan. Pr. 283—290; and as to demurrers for multifariousness, see *ib.* 479. For other forms of such demurrers, see Lewis, Eq. Drafting, 338; 2 Van Hey. 80; Willis, Eq. Pl. 464.

(*d*) See *Barkworth* v. *Young*, *ubi sup.* As to demurrers on the ground of the statute of frauds, see Dan. Pr. 480; and for another form of such demurrer, see Lewis, Eq. Drafting, 338.

(*e*) Lewis, Eq. Drafting, 339. As to demurrers to discovery only, see Dan. Pr. 481, *et seq.*, 504; and see *ante*, No. 641 (1).

bill, or any of them ; or stated or shown any right to call upon this defendant [*Or*, the defendants or either (any) of them] in a Court of Equity for a discovery of the said matters and things, or any of them.

Section IV.—Pleas (*f*).

2255.
Formal parts.

See *ante*, No. 504.

2256.
Plea in bar, that defendants are not legal personal representatives (*g*).

We, T. L. C. and J. F., by protestation (*&c. : as in ante*, No. 504, *to* alleged), to all the relief, and to all the discovery, sought for and prayed against us by the said bill do plead in bar to the said bill ; and for a plea say : that immediately after the death of Sir C. R. T., the testator in the said bill named, the solicitor of the plaintiff A. C. T. entered a *caveat* in the Court of Probate to prevent any person from proving the will and codicil of the said testator in the said bill mentioned ; and that he thereby prevented probate being obtained of such will and codicil, or the constitution of a legal personal representative of the said testator ; and that in consequence of the aforesaid act of the plaintiff's solicitor, and in fact, we have not, nor has either of us, proved the said will or codicil, or been constituted in any manner the legal personal representatives, or the legal personal representative, of the said testator ; and we are not, nor is either of us, nor have nor has we or either of us, ever been executors or executor, or legal personal representatives, or legal personal representative, of the said testator. All which matters and things we aver to be true ; and plead the same in bar to the whole of the discovery and relief sought and prayed by the plaintiff's said bill of complaint ; and humbly demand the judgment of this honourable Court in respect thereof.

2257.
Plea of a release (*h*).

I, C. D., by protestation (*&c. : as in ante*, No. 504, *to* alleged), do plead thereto ; and for a plea say : that by a certain deed poll of release dated the —— day of ——, under the hands and seals

(*f*) As to pleas generally, see Dan. Pr. 520—611. For the general form of a plea, see *ante*, No. 504 ; and for other forms, see *ante*, Nos. 640—642 ; Beames on Pleas, 325—349 ; Drewry, Eq. Pl. 14 ; Lewis, Eq. Drafting, 340—344 ; 2 Van Hey. 94—118 ; Willis, Eq. Pl. 485—586. For joinder of pleas with other defences, see *ante*, Nos. 640—642.

(*g*) *Tempest* v. *Lord Camoys*, W. N. (1866), 16 : 14 W. R. 326, M. R. ; see Dan. Pr. 220, 545.

(*h*) See Dan. Pr. 578, 579. For form of answer craving same benefit of release as if pleaded, see *post*, No. 2280.

of the plaintiffs, and duly executed and delivered by them: reciting, *&c.* (*Stating release from plaintiffs to defendant of all claims in the lands*). And I further say that the messuages, lands, tenements, and hereditaments, touching which the plaintiffs seek relief by their said bill, are the same messuages, lands, tenements, and hereditaments as are mentioned and intended in and by the said deed poll to be thereby released, together with all suits and actions concerning the same. All which matters and things I aver to be true; and do plead the same in bar to the said bill. And I therefore humbly pray the judgment of this honourable Court whether I shall be compelled to make any further or other answer to the plaintiff's said bill; and pray to be hence dismissed with my reasonable costs in this behalf sustained.

2258.

Plea of another suit pending in the Court of Chancery of the County Palatine of Lancaster (*i*).

We, J. T. and E. G., by protestation (*&c.: as in ante*, No. 504, *to* alleged), for plea to the whole of the said bill say: that on the —— day of ——, the plaintiff B. L., by J. L. her next friend, filed her claim in the Court of Chancery of the County Palatine of Lancaster against these defendants, *&c.;* and thereby the plaintiff B. L. claimed as follows; that is to say: (*Stating what*). And we further aver, that all the defendants to the said claim duly appeared thereto; and that by an order dated the 7th August, 1861, in the said former suit, on the application of the defendants thereto, other than the defendant J. L., it was ordered that (*Stating the substance of the order: for which see ante*, No. 514). And we further aver, that no proceeding has been had in the said former suit; but that the same is still pending; and that the said former suit is in respect of the same matters, and for the same purposes, as the present suit; and that the said county of Lancaster has been from time whereof the memory of man is not to the contrary, and now is, a County Palatine: having co-equal jurisdiction with this Court touching or concerning property within the jurisdiction of the said Court; and that all the property in question in the present suit, and all the parties to the present suit, are within the jurisdiction of the said Court; and that the plaintiff B. L. may obtain the same relief in the said former suit as in the present suit, touching the matters in the said bill mentioned. Therefore, we plead the said former suit in the Court of Chancery of the County Palatine of Lancaster, and the several proceedings therein, in bar to the plaintiff's said bill in this Court; and humbly demand the judgment of this Court whether we shall be compelled (*&c.: Concluding as in* No. 2257, *ante*).

(*i*) *Leigh* v. *Turner*, filed 7 Sept. 1865 (1865, L. No. 68). For the subsequent proceedings on this plea, see *ante*, Nos. 513, 514.

Section V.—Answers (*k*).

1. *Formal parts and Precedent.*

See *ante*, Nos. 531—543.

2259.
Formal parts.

2260.
Precedent of an answer (*l*).

In answer to the said bill I, T. E. (*l*), say as follows :—

1. I have for several years been well acquainted with the defendant E. V., who was and is a solicitor practising at R., in the bill mentioned ; and who has for some time been, and still is secretary to the R. Union Gas Company, and owner of the leasehold messuages and premises in the said bill respectively mentioned or referred to ; and on or before the 30th day of June, 1854, I was informed that legal proceedings against the defendant E. V. were contemplated by or on behalf of the family or representatives of Mr. G. C., in the bill named, for the purpose of compelling payment by the defendant E. V. of a sum of money due, or alleged to be due, from him to the estate of the said G. C., and charged by him upon certain shares in the said gas company, and upon the said leasehold messuages and premises, and on the policy of assurance and rent charge, in the said bill respectively mentioned ; and that with a view to such proceedings it was intended to give notices of such charge to the said gas company, and to the several tenants of the said leasehold messuages and premises, and to the P. Insurance Company, in the bill mentioned ; and being of opinion that such notices and the notoriety which would be thereby occasioned of his affairs being embarrassed, and other probable consequences from the same, would be highly prejudicial to the defendant E. V., and his family, I was very desirous of protecting him from such notices being given, and also to save him from proceedings or pressure to compel payment ; and consequently I wrote and sent, on the said 30th day of June,

(*k*) As to answers generally, see Dan. Pr. 618—686 ; and *ante*, No. 531, *et seq.* For the model form of an answer, see *ante*, No. 531 ; and for other forms, see *ante*, Nos. 640—642 ; Drewry, Eq. Pl. 148—151 ; Lewis, Eq. Drafting, 345—349; 2 Van Hey. 1—71 ; Whitworth, Eq. Prec. 591—612 ; Willis, Eq. Pl. 587—617. As to disclaimer generally, see Dan. Pr. 612—617 ; and *ante*, Nos. 525—530. For the general form of a disclaimer, see *ante*, Nos. 525, 526 ; and for other forms, see 2 Van Hey. 69—71 ; Willis, Eq. Pl. 615 ; Lewis, Eq. Drafting, 346.

(*l*) This is the answer of the defendant T. E. to the bill in *Morris* v. *Vines*, *ante*, No. 2230 ; and, upon its coming in, the plaintiffs were advised that it displaced the case against that defendant, and that there was no object in continuing him a party to the suit.

to the defendant E. V., a letter informing him of my willingness to redeem the security given by him within a month, if, by so doing, I could protect him from such notices being given: which letter was in the words and figures following; that is to say: (*Setting out letter*). The said letter did not satisfy the plaintiffs: being the parties therein referred to: and the offer which I thereby expressed myself willing to make, upon condition of such protection as aforesaid being granted, was declined by the said parties, and such protection was not granted.

2. On or about the 4th day of July, 1854, Messrs. S., solicitors, as I believe, for the plaintiffs, and to whom, as I believe my letter above stated had been forwarded by the defendant E. V., wrote and sent to me a letter in the words and figures following: (*Setting out letter from solicitors, to E. T.: inquiring whether he would undertake to pay debt, and take transfer of securities within a month*).

3. The last hereinbefore stated letter having been sent to the E. hotel: which place I had previously left: was not received by me till several days afterwards.

4. On or about the 7th day of July aforesaid, the said Messrs. S. wrote and sent to me a letter in the words and figures following: (*Setting out letter stating that no answer had been received by Messrs. S. to their last letter, and requesting an answer*).

5. The above stated letters of the 4th and 7th days of July were forwarded to me at my then and present residence, S. house, H.; and upon the receipt thereof, I wrote and sent to the said Messrs. S. a letter in the words, or to the purport and effect, following: (*Setting out letter agreeing to take a transfer of the equitable mortgage in a month*).

6. In answer to the said last mentioned letter the said Messrs. S. wrote and sent to me a letter in the words and figures following: (*Setting out letter enclosing memorandum of agreement for transfer: to be signed by T. E.*).

7. The writing in the said last stated letter described as a memorandum of agreement and enclosed therein was in the words and figures following: (*Setting out agreement to take a transfer within two months*).

8. After receiving the last stated letter and writing, I consulted my solicitor Mr. J. V., of, *&c.*, respecting the same; and he was of opinion that it would be prudent on my part that a clause should be inserted in such writing before the same should be signed by me, to bind the plaintiffs to give during the said two months any such notice or notices as I should require; and he wished to consult counsel respecting the same, and which accordingly I requested him to do; but in order to avoid delay, I signed the said writing without such additional clause, and placed the same in the hands of the said J. V.: to be delivered in case counsel should be of opinion that no such clause was necessary, and in case the proposed agreement was to be carried into effect without any variation: and the said J. V. thereupon, and on

Saturday, the 15th day of July, called upon the said Messrs. S., and saw Mr. F. of the said firm, and explained to him the nature of the additional clause desired ; and Mr. F. thereupon said, that unless such an agreement, with or without the additional clause, was delivered at or before one o'clock on the following Monday, they should consider the treaty ended, and that the notices would be forthwith served. The said Mr. J. V. endeavoured without delay to consult counsel on the subject ; and in consequence, as I believe, of the temporary absence from L. of the counsel whose opinion he wished to obtain, he was unable to get such opinion within the time stipulated by the said Mr. F. ; and consequently no such agreement as required was delivered at or before one o'clock on the said Monday, the 17th day of July ; and shortly after the said hour, the said Mr. J. V. was informed, by a friend of the plaintiffs, that the notices had been actually sent, and in fact a person was sent by the said Messrs. S. to R., on behalf of the plaintiffs, to deliver, and he did deliver, on the evening of the same Monday, the 17th day of July aforesaid, such notices to the said R. Union Gas Company, and to the said tenants of the said leasehold messuages and premises ; and a like notice was on the following day served on the said insurance office.

9. The said negociation and treaty between the plaintiffs and myself was thereby broken off ; and no agreement was made respecting the matters aforesaid, or the matters in the said bill mentioned, or any of them ; and the document so signed by me was not, nor was any memorandum of agreement by me, delivered to the plaintiffs, or their said solicitors, or other person on their behalf, at any time ; and the said document is now in the possession of my solicitor on my behalf.

10. No letter or writing or communication, save as aforesaid, passed between me and the plaintiffs, or any person on their behalf; and for my greater certainty as to the said several letters and writings, I crave leave to refer to the same when produced ; and I deny it to be true that I did, by letters or letter, or other writing signed by me, or otherwise, agree with the plaintiffs, or any or either of them, that if they would postpone giving notice of the agreement in the bill mentioned to the tenants of the property, and to the gas and insurances offices, therein respectively mentioned, or any or either of them, I would take a transfer of the security in the said bill mentioned, or of any other security, or that I at any time, or in any manner, entered into any such agreement as in the said bill mentioned. And I deny it to be true that the plaintiffs relied on any such agreement as in the said bill stated ; or that they forbore to give such notice as in the said bill stated ; and on the contrary I say, that the plaintiffs did, on the said 17th day of July, 1854, give such notices, and on the 20th of the same month of July they filed their bill in this suit, and that on the 24th day of the same month they applied for and obtained an order of this honourable Court for the appointment of a receiver to collect, get in, and receive the

rents and profits of the leasehold premises, and the dividends of the shares and the rent charges, respectively mentioned in the plaintiffs' bill ; and the tenants of the said leasehold estates were thereby ordered to attorn, and pay their rents in arrear and growing rents to such receiver : who was to be at liberty to manage, set, and let the said estates with the approbation of the Judge to whose Court the cause is attached, as there should be occasion. And I say that the said letters and writings were and are no more than parts of a negociation or treaty, into which I entered, as the plaintiffs knew, only with the desire, and for the purposes hereinbefore in that behalf mentioned, and not otherwise : which desire and purposes were entirely frustrated by the said plaintiffs breaking off and abandoning the said treaty in manner aforesaid, and by their serving such notices, and by instituting this suit, and taking the said proceedings therein. And I deny it to be true that I acted in the matter in the said bill mentioned, or in any other matter, in concert with the defendant E. V., for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of portions of his property ; and I deny it to be true that the defendant E. V. accordingly realised portions of his property, and placed the same out of the reach of his creditors.

11. I submit that the plaintiffs have not, on their bill, shown any case in equity, or case entitling them to proceed against me in this honourable Court ; and I pray all such benefit as if I had demurred to the said bill (*m*).

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2. *Common Forms of Statements and Allegations.*

2261.

Accounts: reference to book containing them (*n*).

The dealings and transactions in respect of the said trade are entered in a large book, or ledger, kept on the premises at ——— ; and the items in respect thereof are contained in 164 pages, with double columns, of the said book ; and to set out such items in detail would occasion very great expense ; but we are willing, if the Court should think proper so to direct, that the plaintiff or his solicitor should inspect the said book, and take extracts therefrom, at all reasonable times of the day.

2262.

The like (*n*).

In answer to the 14th interrogatory we say, that the book debts of the said testator appear by the said ledger ; and we have not, nor hath either of us, had or made any other account thereof ; and we are wholly unable to set forth any other account thereof, according to our respective knowledge, remembrance, information or belief.

(*m*) As to this submission, see Dan. Pr. 620, 621.

(*n*) See Dan. Pr. 628, 629.

2263.
Accounts: reference to schedules thereof to answer (*o*).

I have in the first schedule hereto, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information, remembrance and belief, a full true and particular list and account of all the personal estate and effects of or to which the said testator was possessed or entitled at the time of his death. And I say, that I have possessed myself of all such personal estate and effects. And as to such articles of personal effects as were as aforesaid specifically bequeathed by the said will, I say, that I have delivered the same to the several legatees to whom the same respectively were bequeathed. And I say that my dealings with the rest of the said personal estate and effects appear by the second and third schedules to this my answer. And in the second schedule hereto, and which I pray may be taken as part of this my answer, I have to the best of my knowledge, information, remembrance and belief, set forth a full true and particular account of all monies received and paid by me on account or in respect of the personal estate of the said testator, and by an inspection of which it will be seen what from time to time were the balances in my hands. And in the third schedule hereto, and which I pray may be taken as part of this my answer, I have, to the best of my knowledge, information, remembrance and belief, set forth a full true and particular account of the government and other stocks forming part of the said testator's estate, and of my dealings with the same. And save as aforesaid, I am unable, as to my belief or otherwise, to set forth any account of the personal estate of the said testator, at the time of his decease, or of the particulars whereof the same consisted, or of such parts thereof as have come to my hands, or the hands of any other person, by my order, or for my use, or of my application thereof respectively, or of such parts of the said personal estate as are outstanding, or of the balances which have from time to time been in my hands or power in respect of the said personal estate.

2264.
Particulars of property: reference to schedule thereof to answer (*o*).

We have in the schedule hereto set forth, according to the best of our knowledge, information and belief, a short but complete statement of the several particulars of the said testator's freehold and personal estate, and what parts or portions thereof have been sold, called in, or converted into money, and the several particulars of which the said testator's estate now consists, and upon what securities, and in whose names or name, and in what manner the same and every part thereof is invested.

(*o*) See Dan. Pr. 628, 631. As to when schedules will be deemed impertinent, see *ib.* 631.

2265.
Accounts refused, as being useless before decree (*p*).

And we say and submit, that it would only occasion great and useless expense were we in this our answer to set forth any further or fuller account of the rents and profits aforesaid; and that the same ought to be taken, if at all, by and under the directions and decree of this honourable Court.

2266.
Admission.

We admit that, *&c.*

2267.
Admission for purposes of the suit.

We have no personal knowledge of the fact, but, for the purposes of this suit, we admit that, *&c.*

2268.
Claims made by defendant.

I claim to be interested in the matters of this suit by virtue of, *&c.*

The short particulars of the mortgage now vested in us, and of our title thereto are as follows, *&c.*

We claim to be equitable mortgagees of the hereditaments mentioned in the said bill, together with other hereditaments, under a memorandum in the words and figures following; that is to say: *&c.*

We claim a lien on the shares of, *&c.*, for so much of the said debts as arises from the unpaid purchase money of the same shares respectively, and the interest thereof.

2269.
Craving leave, for greater certainty (*q*).

We admit that, *&c.*—*Or*, We believe that, *&c.*—but for greater certainty, we crave leave to refer to the said, *&c.*, when produced.

2270.
Craving leave to refer to co-defendant's answer (*r*).

I know little or nothing respecting the deeds, dealings and transactions stated in the said amended bill; but I have seen a copy of the answer proposed to be forthwith put in to the amended bill by the defendants J. L. and G. W. F.; and I have no doubt but that the statements contained in such answer are correct. However, for my greater certainty, as to the contents of deeds and other written documents, I crave leave to refer to such deeds or documents. Under the circumstances hereinbefore stated, and to avoid expense and prolixity, I abstain from answering categorically the interrogatories filed for the examination of the last named defendants and myself in answer to the amended bill; but if the plaintiffs so desire, I am ready and willing to put in a full answer to the said amended bill.

(*p*) See Dan. Pr. 627, 752.
(*q*) *Ibid.*, 630, 739, 1691.
(*r*) *Ibid.*, 743.

2271. Offer to deliver documents, instead of scheduling.

I have in my possession certain papers and old rate books, which I am willing to hand over to the plaintiffs if they desire it. No application for any of the said papers or books was ever made to me prior to the filing of the bill in this cause. I have, under these circumstances, set out no list or schedule of such papers and books; and I submit that to do so would have been a useless expense.

2272. Reference to discovery of documents already given by affidavit (*s*).

I have, under an order made in this cause, and dated the —— day of ——, 187—, made an affidavit, to which I crave leave to refer, and which is, I submit, a sufficient answer to the 34th interrogatory to the said bill: being the interrogatory as to documents.

2273. Inability to discover contents of documents (*t*).

The said settlement, and other deeds and documents hereinbefore mentioned, have been for some time and are now in the custody, possession, or power of the plaintiff W. S.; but he refuses to produce the same, or to give me any information with respect to their contents; and I am, therefore, unable to set forth the same, or any of them, with greater certainty or particularity than hereinbefore appears.

2274. Objection to discovery of documents, on ground of privilege (*u*).

We have also in our possession or power the several other documents mentioned and described in the second part of the said schedule; but we say that the same relate exclusively to our title to the said freehold hereditaments, and do not in any way show, or tend to show, any right or title in the plaintiffs, or either of them, therein or thereto, or in or to any part thereof. And we submit that the same are privileged documents; and we object to produce the same or any of them. We deny that thereby, or by any of them, if produced, the truth of the matters in the said bill mentioned, or any of them, would appear.

2275. Objection by mortgagee to produce documents (*x*).

I say that I have in my possession or power divers deeds, documents, papers and writings, relating to the hereditaments and premises in the said bill mentioned, and to the matters in the said bill mentioned, and that thereby, if produced, the truth of the matters in the said bill mentioned as the same are herein, and not as the same are in the said bill, set forth, will appear. And I

(*s*) See Dan. Pr. 1674. For form of affidavit as to documents, see *ante*, No. 1934.

(*t*) See Dan. Pr. 629.

(*u*) *Ibid.*, 488, *et seq.*, 622, 623; and *ante*, No. 1934, n. (*z*).

(*x*) *Ibid.*, 1695.

have in the schedule hereto set forth a full and true list and sufficient description of all the said several particulars; but I say that I am a mortgagee; and that a large sum is still due and owing to me on my mortgage securities; and that the said several deeds, documents, and papers and writings form and support my title, and are intended to be used by me in evidence thereof accordingly; and do not contain anything impeaching my case, or tending to support the plaintiffs' title, otherwise than as such title is herein admitted. And I insist that, until I have been paid the principal money and interest due on my said mortgage, in the said bill and hereinbefore mentioned, and the costs of this suit, the plaintiffs are not entitled to inspect the said deeds, documents, papers and writings, or any of them, or to have the same or any of them produced for any purpose. And save as aforesaid, I deny it to be true that I have now, or had lately (*Traverse the interrogatories*).

2276.

Information and belief (*y*).

I have been informed and believe, that, *&c.*

I believe that, *&c.*

We have no reason to doubt, and therefore we believe that, *&c.*

We believe that the statements contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiffs' bill of complaint are true, except in the particulars or respect hereinafter mentioned; that is to say: *&c.*

I, this defendant, W. R., say, and we, these other defendants, believe it to be true, that, *&c.*

We have no personal knowledge of the matters inquired after by the —— interrogatory filed in this cause; but we have no reason to doubt, and therefore we believe, that, *&c.*

2277.

Ignorance (*y*).

I [*Or*, We] do not know, and cannot set forth as to my [*Or*, as to either of our] belief or otherwise, whether or not it is alleged or is the fact that, *&c.*,

---

2278.

Qualified denial (*z*).

Save as herein appears, it is not the fact, *&c.*

Save as herein appears [*Or*, Save as by the said schedule appears], I do not know, *&c.*

2279.

Reference to a schedule.

I have in the —— schedule hereto, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information and belief, a description of, *&c.*

(*y*) See Dan. Pr. 627, 628, 742.

(*z*) *Ibid.*, 630; Ord. XV. 2.

2280.

We submit, and humbly insist, that the said release so executed as aforesaid, and the payment of the said sum of £——, and the receipt given for the same, is a full discharge; and we claim the same benefit as if we had pleaded the same release. Nevertheless, we are willing and hereby submit to account as this honourable Court may think fit.

Release: craving same benefit, as if pleaded (*a*).

2281.

I insist on the statute made in the 21st year of His late Majesty James the 1st, for the limitation of actions, in as full and ample a manner as if I had pleaded the same in bar of the plaintiffs' said bill, or to the relief sought thereby.

Statute of limitations of 21 James I. c. 16, claimed, as if pleaded (*b*).

2282.

We severally claim the benefit of the provisions made in and by the statute passed in the session holden in the 3rd and 4th years of the reign of King William the 4th, "for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto," and of all other statutes of limitation, in bar to the relief sought by the plaintiff in this suit: in the like manner as if we had pleaded the same.

The like, of 3 & 4 Will. IV. c. 27 (*b*).

2283.

The account so stated and settled was in fact stated and settled by the said A. B. and myself, as it purports to be, on the day of the date thereof; and I claim the benefit thereof as a settled account.

Settled accounts: claim of (*c*).

2284.

We submit to the judgment of this honourable Court whether it is or not the fact, *&c.*

Submission of fact.

2285.

We submit in all things to act as this honourable Court shall direct; and we claim to have our costs, charges, and expenses, properly incurred (*d*), paid out of the estate of the said testator.

Submission by trustee to act.

2286.

The said J. S. died on the —— day of ——, and not on the —— day of ——, as in the 2nd paragraph of the said bill erroneously stated; but save as aforesaid, we do not know, and are unable as to our belief or otherwise, to set forth whether or not the statements, or some or one or which of the statements,

Traverse (*e*).

(*a*) See Dan. Pr. 620, 623. For form of plea of a release, see *ante*, No. 2257.
(*b*) See Dan. Pr. 620, 623.
(*c*) *Ibid.*, 575—577.
(*d*) *Ibid.*, 1132, 1304.
(*e*) *Ibid.*, 629, 630; Ord. XV. 2.

contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiffs' bill of complaint are or is true, or which of them are or is or in what respect untrue, or how otherwise.

2287.

Trustee: desire to be discharged.

I have never in any manner intermeddled with the said trust estate, nor received any of the rents and profits thereof; and I am very desirous to be discharged from the trusts in the bill mentioned, and I am ready and willing to convey and release the trust premises to such persons, or to do such other acts, as this honourable Court shall direct for that purpose, upon being indemnified in so doing, and having my costs and expenses.

2288.

Vexatious suit: settled accounts: claim of benefit of defence as if raised by plea or demurrer (*f*).

We submit to the judgment of this honourable Court, and humbly insist, that this suit is altogether unnecessary and vexatious; and that even if the plaintiff had been entitled to any such relief as is prayed by the said bill, the same might have been obtained by proceedings at law; but we say that a large sum of money has been for a long time, and now is, justly due and owing to us from the plaintiff; and that during the whole of the transactions in the said bill mentioned we were in advance with creditors of the plaintiff; and that the plaintiff has repeatedly, and partly in the letters hereinbefore set forth, acknowledged the accuracy of the accounts rendered by us to him; and has treated the same as being, as in fact they were, settled accounts; and we claim the same benefit from this our answer as if we had pleaded the several matters herein stated or any of them, or as if we had demurred to the said bill.

2289.

Want of interest in plaintiff: craving same benefit as if defence by demurrer (*f*).

I am advised, and humbly submit, that the plaintiff has not any interest in the estate of the said testator, or in the matters in question in this suit, nor any such estate or interest in the said testator's estate, or the matters aforesaid, as to entitle the plaintiff to sustain this suit; and I crave the same benefit from this defence as if I had demurred to the said bill.

2290.

Claim of benefit of same defence to amended as to original bill (*g*).

We submit that the plaintiff has not, by his said amended bill, entitled himself to any equitable relief as against us; and we accordingly claim the benefit of the same objections to the said amended bill as are claimed by our said answer to the said original bill.

(*f*) See Dan. Pr. 620, 623.
(*g*) *Ibid.* 632, 678.

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